

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NORMA R. BROIN, et al.,
Plaintiffs,

vs.

CASE NO. 91-49738
CA 22

PHILIP MORRIS COMPANIES,
INC., et al.,
Defendants.

TRIAL
VOLUME 57

TRANSCRIPT OF PROCEEDINGS in the
above-styled cause before the Honorable Robert Paul
Kaye, at the Dade County Courthouse, 73 West Flagler
Street, Miami, Florida, on Wednesday, July 23, 1997,
at 1:15 p.m.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

On behalf of the Plaintiffs

HUGH R. WHITING, ESQ.

JONES DAY REAVIS & POGUE

On behalf of R.J. Reynolds

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

EDWARD MOSS, ESQ.
THOMASINA MOORE, ESQ.
ANDERSON MOSS SHEROUSE & PETROS
On behalf of Brown & Williamson
DAVID L. ROSS, ESQ.
GREENBERG TRAUIG HOFFMAN LIPOFF ROSEN & QUENTEL
On behalf of Lorillard
DAVID HARDY, ESQ.
and WALTER COFER, ESQ.
SHOOK HARDY & BACON
On behalf of Lorillard and Philip Morris
KELLY ANNE LUTHER, ESQ.
CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
On behalf of Liggett and Brooke Groups
MARIE SANTACROCE, ESQ.
KASOWITZ BENSON TORRES & FRIEDMAN
On behalf of Liggett and Brooke Groups
MICHAEL RUSS, ESQ.
KING & SPALDING
On behalf of Brown & Williamson and American
Tobacco Company
JOSEPH R. MOODHE, ESQ.
DEBEVOISE & PLIMPTON
On behalf of The Council for Tobacco Research
JOSE MARTINEZ, ESQ.
MARTINEZ & GUTIERREZ
On behalf of Philip Morris
JEFFREY FURR, ESQ.
WOMBLE & CARLYLE
On behalf of R.J. Reynolds
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS	VOIR DIRE	DE	CE	RED
THOMAS PRICE HOUSTON, Ph.D.				
(By Mr. Rosenblatt)		7168		
(By Mr. Cofer)	7210			
(By Mr. Rosenblatt)	7211			
(By Mr. Cofer)	7214			
(By Mr. Rosenblatt)		7219		
(By Mr. Moodhe)	7236			
(By Mr. Cofer)			7274	
(By Mr. Rosenblatt)				7298

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(The following proceedings were had outside the presence of the jury:)

THE COURT: Okay. Have a seat.

MR. RUSS: We have some preliminary matters to take up. Could we excuse the witness?

THE COURT: Oh, the witness is in the room? If you will wait outside, I'd appreciate it.

(The witness exited the courtroom.)

THE COURT: Yes, sir?

MR. RUSS: All right, Your Honor. There are, I think, two principal preliminary issues that we need to address before Dr. Houston's testimony.

First of all, just as a housekeeping issue, the plaintiffs gave us their exhibits for use with Dr. Houston's testimony, and Plaintiffs' Exhibit 475 was a privileged document of Brown & Williamson that was logged on our privilege log as No. 55, and it was not on the list of the 28 and, therefore, under the representations of the plaintiffs that they would withdraw all documents as to which we claim privilege that were not on their designation of 28, I understand that they will and do now withdraw Plaintiffs' Exhibit 475.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Is that correct?

2 MS. ROSENBLATT: Yes, based on -- I
3 have not independently verified that. Based on the
4 representation that apparently those were on the
5 privilege log and those were apparently not
6 available other than through the Brown & Williamson
7 papers; in other words, those are documents that
8 were not available through any other litigation;
9 that was the only source.

10 MR. RUSS: It was stolen from us and it
11 was privileged, and we put it on our privilege log.
12 That's the representation.

13 THE COURT: The other problem is it
14 wasn't on the list of 28.

15 MR. RUSS: It wasn't on the list of 28.

16 THE COURT: The understanding of the
17 Court at that time was the only ones they were
18 concerned about was the 28 documents which they said
19 they would choose to use and have the Court review.
20 The rest they were waiving or at least giving up the
21 right to use it.

22 MS. ROSENBLATT: As to those where
23 privilege was asserted. There are many, many Brown
24 & Williamson documents where there is no privilege
25 asserted that we have listed and we are using, and

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 that was never a bone of contention.

2 I know Your Honor brought up the fact that
3 they were stolen and that may have an impact. You
4 know, that will be addressed separately. I don't
5 think there's case law on that, but there's other
6 Brown & Williamson documents, but it gets a little
7 tricky because there are documents that were
8 available from Brown & Williamson through other
9 litigation, and sometimes there's overlap. They may
10 have been among the ones stolen, but they are
11 nevertheless previously around and in the public
12 domain. They wouldn't fall in that --

13 THE COURT: Prior to the fact they were
14 in the public domain?

15 MS. ROSENBLATT: Some of the documents
16 in litigation with Brown & Williamson -- I don't
17 think every single document stolen had never
18 surfaced before. There may be some that are -- you
19 know, I just wanted to know as far as counsel knew
20 if that was on the --

21 THE COURT: Let's narrow this down.
22 You claim privilege on this particular document. It
23 was on the privileged list. It was not on the list
24 of the 28.

25 MR. RUSS: Correct.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE COURT: Therefore, it's not going
2 to be used.

3 MR. RUSS: That's our position, and
4 that's correct.

5 MS. ROSENBLATT: I have not verified
6 that.

7 THE COURT: What do you mean you have
8 not verified?

9 MS. ROSENBLATT: I'd have to go back to
10 the office to the privilege log and check it, but I
11 assume counsel did that, and I'm just stating that.

12 THE COURT: If you ever find out
13 differently, you let me know.

14 MR. RUSS: Plaintiffs' Exhibit No. 917
15 was a document that was No. 18 on the plaintiffs'
16 list of 28, and under Your Honor's order of May 29,
17 you upheld our claim of privilege with respect to
18 that document and it's out of here.

19 THE COURT: So be it.

20 MR. RUSS: So, it's withdrawn.

21 MS. ROSENBLATT: With, you know, the
22 same comments regarding that.

23 MR. RUSS: Now on to a separate subject
24 with respect to Dr. Houston's testimony. I want to
25 renew an argument that was made earlier that you had

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 not, I don't believe, definitively ruled on as yet,
2 and that deals with the issue of The Cigarette
3 Papers, which is this book right here that's
4 Plaintiffs' Exhibit 894.

5 This book, The Cigarette Papers, is -- first
6 of all, let me tell you what it's not. It's not a
7 reprint of the documents that were stolen from Brown
8 & Williamson. It's not a compilation of those
9 documents.

10 This is a book that was written by
11 anti-tobacco activists, which on the cover sheet of
12 it is a statement by Richard Daynard of the Tobacco
13 Products Liability Project which is a consortium of
14 plaintiffs' lawyers that deal with advancing
15 anti-tobacco litigation.

16 We could prove through prior deposition
17 testimony that Mr. Daynard was in contact with
18 Merrell Williams who is the individual that stole
19 our documents. He is quoted in this book that this
20 book is not by any way, shape or form any sort of
21 objective restatement of our documents. It's a
22 commentary and anti-tobacco rhetoric piece which
23 puts the plaintiffs' bar's spin on our stolen
24 documents and our privileged documents.

25 This book and others like it, Smoke Screen,
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Ashes to Ashes and others that are also listed on
2 the plaintiffs' exhibit lists are, first of all,
3 classic hearsay.

4 Second of all, it's riddled with excerpts
5 and quotations from our privileged documents and our
6 stolen documents, and the use of this book and its
7 counterparts by any expert witness would be a
8 blatant evasion of the Court's order of May 29
9 limiting reliance on our privileged documents.

10 It would be a violation of our privilege and
11 we object to this book or any like it based upon our
12 privileged documents being relied upon by any
13 expert.

14 In addition to that, Your Honor, in addition
15 to that, this book and others like it are, under
16 Florida law, absolutely not the kind of materials
17 that may reasonably be relied upon by experts.

18 This is not a scientific treatise. It's not
19 a medical recitation of scientific evidence. It's
20 anti-tobacco rhetoric and spin.

21 In the deposition of Dr. Houston, when he
22 was asked questions about what he relied upon as a
23 basis for his opinions on tobacco company activities
24 which he characterized as suppression, the documents
25 that are relied upon, the single thing that he

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 quoted most frequently was this piece of advocacy.

2 It's our position, Your Honor, that because
3 it involves our privileged documents, because it's
4 not material to the nature that an expert may
5 reasonably rely upon, neither Dr. Houston nor any
6 other witness in this case can rely upon this book
7 as a basis for any expert opinion, even if the
8 subject matter as to which they are testifying is
9 the proper subject of an expert opinion, as to which
10 they have another issue that I believe will be
11 addressed by Mr. Moody.

12 I have authorities that I'd like to cite to
13 the Court on the legal issue of whether or not this
14 is, in fact, a proper subject for expert testimony.

15 One is the Cox case, if I can find it. One
16 is the Department of Health and Rehabilitative
17 Services versus Cox, which is 627 So.2d 1210, and
18 that was a case in which the issue was much
19 different than our issue. It was an issue of
20 whether or not the constitutionality of the Florida
21 Statute dealing with homosexual adoption, but the
22 evidence in that case sought to justify the
23 unconstitutionality of the statute consisted of
24 basically popular literature, unscientific
25 literature, which the Court said there was no

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 showing made as to the scientific basis for that
2 literature.

3 Typically material of a hearsay nature that
4 an expert would seek to rely upon would attempt to
5 be justified under 90.704. Under 90.704, the fact
6 that it may not be admissible in evidence,
7 nevertheless, has to be material to a type which is
8 reasonable for experts to rely upon in their field
9 of expertise.

10 This book and the other material like it,
11 which Mrs. Rosenblatt is holding, does not meet the
12 standard required for that.

13 I would cite the Court to Riggins versus
14 Mariner Boat Works, which is 545 So.2d 430, where I
15 know Your Honor is familiar with the concept that an
16 expert cannot be used as a conduit to get into
17 evidence that which is otherwise inadmissible.

18 In that case, in the Riggins case, the
19 material was an autopsy report that could not be
20 admitted into evidence because proper foundation was
21 not laid.

22 Nevertheless, the expert witness, the
23 toxicologist, got up and gave an opinion as to the
24 blood alcohol content of the deceased based upon
25 that autopsy report which was hearsay, and the Court

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 said, and I quote, "The expert was rendering an
2 opinion on blood alcohol content and was relying
3 exclusively on information which was not in evidence
4 at trial. The expert opinion only helped the jury
5 to understand the inadmissible document rather than
6 the evidence at trial."

7 If this witness, Dr. Houston, is permitted
8 to give testimony relative to the testimony that he
9 gave at his deposition based upon The Cigarette
10 Papers, then he will be a conduit for this material
11 which was otherwise improper, inadmissible hearsay,
12 in addition to violating the privileges that we're
13 entitled to maintain.

14 The other case that I'd cite to the Court
15 would be Newall versus Best Security Systems, which
16 is 560 So.2d 395, and the principle in that case is
17 where the expert's opinion was based on unconfirmed
18 data and the appellant failed to establish the
19 underlying facts on which it was based, the trial
20 Court did not abuse its discretion in refusing to
21 admit the testimony.

22 This witness, as an expert, if what he
23 testifies on is subject to expert testimony, can
24 rely upon facts of which he has knowledge, can rely
25 upon his own experiences. He cannot rely upon

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 material such as that propaganda or rhetoric
2 anti-tobacco treatise to bolster an opinion that he
3 doesn't have any knowledge about.

4 That would be improper. He would be serving
5 as an improper conduit for inadmissible evidence and
6 he could be evading Your Honor's order of May 29.

7 We would request that no testimony by
8 Dr. Houston -- the witness should be instructed that
9 none of the testimony can be based upon anything in
10 The Cigarette Papers or any of these other books
11 like this, and we would request that Your Honor so
12 rule.

13 THE COURT: You want to do yours?

14 MR. MOODHE: If I may, Your Honor.
15 Your Honor, the issue I raised at the end of the day
16 yesterday remains very much a live issue based on
17 the documents that have been identified as potential
18 exhibits with this witness today.

19 As I mentioned to you yesterday, Your Honor,
20 most of the documents on that exhibit list, and it
21 remains true, I would say, with the exception of one
22 now --

23 THE COURT: Which witness list --

24 MR. MOODHE: Dr. Houston this
25 afternoon.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE COURT: I didn't mean witness list.
2 Which document list are you talking about?

3 MR. MOODHE: Mrs. Rosenblatt gave us a
4 list of -- I believe it's now with the elimination
5 of these two documents 14 documents --

6 THE COURT: Okay.

7 MR. MOODHE: -- proposed to use with
8 Dr. Houston.

9 THE COURT: All right. Of the 14 --

10 MR. MOODHE: Of the 14, there is but
11 one that I believe an expert -- putting aside
12 whether Dr. Houston is the right expert at the
13 moment -- could testify to that. The remaining
14 documents are basically internal memoranda or
15 letters or the like that are written in plain
16 English about matters that are not of scientific or
17 medical subjects. They are completely
18 understandable by any juror.

19 Now, for Dr. Houston to come in and testify
20 about those documents would be a violation of the
21 rules as to what the expert is properly competent to
22 testify about.

23 As Your Honor knows, the purpose of an
24 expert is to allow the jurors to assist in
25 understanding some material that they otherwise

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 might not be able to comprehend because it's too
2 technical or too complex or it's beyond their
3 ordinary comprehension. These documents don't fall
4 into that category, with the exception of one.

5 What the Rosenblatts would like to do, I
6 believe, is to let Dr. Houston usurp the role of the
7 jury and opine that these documents demonstrate some
8 sort of fraud or scam or other wrongdoing by the
9 tobacco companies, by CTR, by TR. That is an issue
10 for the jury.

11 In this courtroom, there's only one expert
12 as to whether facts prove fraud. That's the
13 collective wisdom of the jury. It's not the stuff
14 an expert is needed to testify about.

15 Now, I think when Your Honor looks at these
16 documents, you can see that they are perfectly
17 understandable by the jury. They are written in
18 plain English. They are written about who said what
19 to whom on what occasion. And I'd be happy to show
20 the documents to Your Honor. Perhaps we can do that
21 simultaneously while we are discussing whether or
22 not they are admissible as evidence in the case
23 itself.

24 But just to give Your Honor some authority,
25 the Fourth DCA case of Seropian v. Forman, which is
 COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
 COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 published at 652 So.2d 490, made this point quite
2 plainly. There the District Court of Appeals said
3 where it's presented with an expert who came in and
4 analyzed three memos which were written in plain
5 English and opined upon whether or not they were
6 defamatory or whether or not they proved that
7 tampering was occurring, the Court said, "Even
8 though in this case the witness was qualified as an
9 expert on public opinion, special taxing districts,
10 and the political process generally, we do not agree
11 that he was, therefore, qualified to translate -- in
12 the same way that linguists might do -- the subject
13 letters for the jury."

14 In other words, what the Court found was
15 that the jury was perfectly competent to read as it
16 described the common ordinary words in the three
17 letters that were presented as evidence.

18 That's exactly what plaintiffs' counsel
19 proposes to do with Dr. Houston, and that would be
20 an abuse of the evidentiary rules to allow a witness
21 to be a conduit for, A, what documents may or may
22 not be admissible to get to the jury but, B, to base
23 opinions -- to offer opinion testimony about the
24 meaning, the significance, the role of those
25 documents. That's the role of the jury.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Now, unfortunately in this case, the problem
2 has been exacerbated by the way the case has been
3 tried. Ordinarily, Your Honor, when we have expert
4 testimony, you have a factual record before you.
5 Generally the order of proof is you put your fact
6 witnesses on, you put your evidence in, then your
7 expert comes in and testifies about it.

8 Here we had nothing so far but expert
9 testimony, and there's precious little we have by
10 way of fact witnesses in this case. There's
11 precious little, I believe, that's going to come in
12 on these matters as admissible evidence.

13 You cannot allow this case to proceed in a
14 way that is going to prejudice the defendants that
15 can't be cured when experts are allowed to testify
16 about these matters that are otherwise inadmissible
17 and that are going to be impossible to purge from
18 the jurors' minds once they've heard that.

19 In that case, in the Fourth District case,
20 it was held to be reversible error to allow that
21 sort of expert testimony in. And I submit, Your
22 Honor, that in this case, particularly where we have
23 no factual record at all to evaluate whether or not
24 any opinion by Dr. Houston on these matters would be
25 admissible, it's improper to proceed.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE COURT: Okay.

2 MS. ROSENBLATT: Addressing The
3 Cigarette Papers first, although listed as an
4 exhibit, we do not intend through this witness to
5 introduce this as an exhibit. We hadn't listed it.
6 And Dr. Houston is the director of the Department of
7 Preventive Medicine and Public Health for the
8 American Medical Association and has been
9 functioning in that capacity which deals primarily
10 with issues of tobacco and health on behalf of the
11 American Medical Association and its members
12 throughout the United States for approximately, I
13 believe, seven or eight years, many years prior to
14 the time this book was published.

15 Dr. Houston will testify that he has
16 independent -- he relies on his education, training,
17 experience, and his opinions are in no way dependent
18 upon The Cigarette Papers. The Cigarette Papers is
19 a compilation of information, including
20 environmental tobacco smoke. And he did read this
21 book and it has a foreword by former U.S. Surgeon
22 General C. Everett Koop, who obviously doesn't agree
23 with defense counsel here, and believes it's an
24 excellent book and people read it to understand what
25 is going on in the industry on issues of smoking and

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 health.

2 It has favorable reviews from the CEO of the
3 American Cancer Society, John Seffrin; from the
4 executive vice-president of the American Medical
5 Association, Dr. James Todd; from the former
6 secretary of Health, Education and Welfare, Joseph
7 Califano, Junior; from Henry Waxman, and of course,
8 from Dr. Koop. And there are many, many things
9 experts rely on, and certainly an individual who is
10 a public health official on behalf of the American
11 Medical Association who has independent knowledge of
12 what is contained in this book also read this book.

13 I mean, I could play the fiction of saying,
14 well, he will totally erase everything he ever read
15 in this particular book. Whether that's possible or
16 not, I can't really say. I don't think this adds
17 very much to what he already knows and he was --
18 actually, because of his expertise, he explained and
19 I learned for the first time today he was sent
20 drafts of this to even review before.

21 He's knowledgeable about it. They wanted
22 his input. So, independent of this book, he's
23 extremely knowledgeable. The Journal of the
24 American Medical Association had an entire issue,
25 and that certainly is something physicians can rely

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 on, talking about some of the evidence that came out
2 through the Brown & Williamson papers.

3 That was, I believe, in July of '93 -- '94.
4 Prior to the time this book was written, there have
5 been numerous reports, scholarly, very definitive
6 reports in the Wall Street Journal, in the New York
7 Times with facts about the Council for Tobacco
8 Research, many things experts rely upon.

9 So, in answer to The Cigarette Papers, it
10 may be a moot issue, because the expert has
11 independent knowledge. This is his area of
12 expertise. His entire career has been devoted to
13 this area. He doesn't need The Cigarette Papers to
14 form any of his opinions. He mentioned it because
15 he said it's all here.

16 He even said at one point, you know, if the
17 jury read the chapter on ETS, they would understand
18 what the science says and what is there. It's very
19 good and it's well written. That was his opinion.

20 And he mentioned The Cigarette Papers, but
21 about a third of his deposition relates to his
22 experience as a public health official with the
23 Council for Tobacco Research, publications from the
24 Council for Tobacco Research, the distortion of
25 medical research and the position of the tobacco

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 companies in his experience as the director of the
2 Department of Preventive Medicine and Public Health
3 of the American Medical Association.

4 So, I feel, number one, there's nothing
5 wrong with an expert having reviewed, in the course
6 of his career, a book that was written, by the way,
7 by physicians, Ph.D.s, Stanton Glantz. And
8 Dr. Glantz did not want to be an expert here because
9 he's objective, he will not be partisan, he will not
10 testify and he has not testified in any case on
11 behalf of plaintiffs.

12 His position is anti-tobacco simply because
13 that's where the facts are and that's how he
14 believes it. And John Slade is a physician who is
15 not an expert here, and there are other Ph.D.'s that
16 wrote this. This is hardly a compilation, and as
17 counsel, said it's not simply a compilation of Brown
18 & Williamson documents.

19 So, we feel, one, it's perfectly appropriate
20 for any expert, among many other things, to have
21 reviewed this book and, number two, independent of
22 this book, this expert can state his opinions, and
23 it's not dependent upon anything in The Cigarette
24 Papers.

25 Now, in terms of the -- and I think we went
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 from 60 some odd documents to now 14, and they're
2 still complaining. I think six were revealed to
3 them in a booklet that was sent to our experts about
4 five or six months ago, which they all had, and so
5 every defendant has known about them for a long
6 time.

7 I disagree. I think that the documents
8 relate to the Council for Tobacco Research and deal
9 with areas of grant programs, because the Council
10 for Tobacco Research purports to be an independent
11 grant program, and it also purports to do
12 appropriate and objective scientific research on
13 issues of tobacco and health.

14 And I think they don't speak for themselves.
15 I think an expert is needed to explain based upon
16 his experience, training in the field and his
17 position with the American Medical Association
18 whether appropriate scientific research methods are
19 presented within these documents, whether statements
20 within these documents are scientifically found,
21 whether they are appropriate, whether the grant
22 program is appropriate based upon his knowledge and
23 experience.

24 How would the juries know that? I think
25 that's the subject for expert testimony. And for

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 example, the apparent very, very heavy involvement
2 of attorneys, the special projects division, this is
3 all -- the expert knows that independent of these
4 documents. These documents reflect that.

5 I mean, whether or not these documents are
6 in evidence, he has independent knowledge of all of
7 these factors, but I think that when these documents
8 are presented, it's important to have an expert
9 explain whether or not these are sound principles in
10 medicine, whether this is appropriate for a grant
11 program, whether in a grant program an industry
12 should be directing how research is done, the AMA's
13 position on that. I think that's all within our
14 fraud count, and I think he, more than anyone, is
15 appropriate to testify as to that, and that's his
16 particular expertise.

17 And I think, Your Honor, if you had any
18 question, if you asked the witness, he could explain
19 his background and why he is suited to explain what
20 is in some of these documents, and there's very few
21 that are really left that are in dispute now.

22 THE COURT: I haven't seen the
23 documents, so I guess I'll have to review those if
24 you give me a packet of that. Let's go back to the
25 initial issue of the book, The Cigarette Papers.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Plaintiff indicated to me that Dr. Houston
2 has independent knowledge that he gleaned prior to
3 the publication of that book. I don't consider the
4 book to be a learned treatise which is acceptable to
5 the Court. It's just a book. It may be a very
6 interesting book, may be a very profitable book, may
7 be a very knowledgeable book, but it isn't the kind
8 of thing I would admit into evidence for that
9 purpose.

10 I think if you go ahead and talk to
11 Dr. Houston about his independent knowledge, that's
12 one thing, without making any reference to the book.
13 That would be fine. So, I'll grant the motion on
14 the part of the defense on that regard.

15 As far as the other documents are concerned,
16 I would have to look at the documents before I could
17 make that determination. It just seems to me that
18 he could even make that comment and those comments
19 regarding the processes that we're talking about and
20 all that sort of thing without making any reference
21 to the documents. I don't think it's necessary for
22 that purpose, but I haven't seen the documents.

23 If, as counsel says, it's a fact that it is
24 not a question of scientific review and it's not
25 necessary to explain the science of it all, then it

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 may be moot and may not be, but I don't know that.
2 So, I think we'll just progress along, and if that
3 issue comes up -- meanwhile, I'll take a look at the
4 documents.

5 MR. MOODHE: If I could just make one
6 additional point. Mrs. Rosenblatt, during the
7 course of her argument, said ask the witness.

8 THE COURT: I'm not to going ask the
9 witness.

10 MR. MOODHE: The witness was asked that
11 question, Your Honor, during his deposition, and he
12 said the documents speak for themselves.

13 THE COURT: I don't know what he means
14 the documents speak for themselves as we understand
15 it in legal terms or whether he understands it in
16 scientific terms. I don't know the difference
17 between what he thinks and what we think, but there
18 is a difference between the two fields.

19 It may become important, I don't know. But
20 in any event, I have to see the documents before I
21 can make any decision.

22 MR. WHITING: Your Honor, may I be
23 heard on one point?

24 THE COURT: Yes, sir.

25 MR. WHITING: I think this goes to the
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 question of whether or not this is a proper subject
2 for expert testimony. What I just heard plaintiffs
3 say is that they want to have this witness, who is a
4 physician certified in family practice who has
5 worked for the AMA for a period of years who, as far
6 as we know, has never had any involvement in funding
7 or societies or anything of the like that speak to
8 whether or not a grant program is appropriate or
9 not --

10 THE COURT: Let me cut this short.
11 There has to be a foundation and predicate laid. I
12 don't know what it is; you do. I don't know. But
13 in order for him to get into that area of expertise,
14 yes, they have to lay a foundation to that.

15 I question in my own mind, before I talked
16 to you folks, what is it he's going to testify about
17 and what is his expertise in the field. If he's the
18 head of the AMA and he's a physician, that's one
19 thing.

20 But if he's somebody that's going to be
21 talking about protocol and processes and procedures
22 and grants and things of that nature, because that's
23 what he does, that's something else. I don't know
24 that to be so, so they are going to have to lay a
25 foundation, I agree with you. But I don't know what

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 it is until I hear it.

2 MR. WHITING: I was trying to make the
3 additional point that there's no specialty, no
4 expertise in this area.

5 THE COURT: Maybe there isn't. I'm not
6 surprised at anything anymore. I knew one fellow in
7 one trial one time came up as an expert in radiator
8 caps. He testified that if you tighten it down and
9 don't loosen it up, it's going to build pressure.
10 It happened to be very interesting. If you don't
11 loosen it, the pressure isn't going to be released.

12 So, there are experts in every field. So,
13 we'll see.

14 MR. RUSS: Can I make sure I'm clear on
15 the Court's ruling? The Court is precluding
16 reliance upon The Cigarette Papers, and that would
17 include the condensed version of this which was
18 published in a JAMA article in July 1995 which is
19 basically the same thing published in a condensed
20 version by these same authors who, by the way,
21 Professor Glantz is not a physician. I think he's a
22 mechanical engineer. But anyway, all of the
23 documents --

24 THE COURT: Precluding reference to The
25 Cigarette Papers.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. RUSS: And the articles in JAMA,
2 which are basically the condensed version of this,
3 and that's another exhibit.

4 THE COURT: All right. Bring in the
5 jury.

6 This is going to take a few minutes.

7 MR. MOODY: Can I understand how we're
8 going to proceed in this matter?

9 THE COURT: Let me see the documents
10 first.

11 MR. MOODHE: Just for your information,
12 it is Exhibit 439 that I believe is the type of
13 document on which an expert can opine.

14 THE COURT: Let me look at that, if I
15 can find that. The rest are going to take some time
16 to read it, I guess. I sure wish I had these
17 documents the day before.

18 MR. MOODHE: Your Honor, we just got
19 advised of them eleven o'clock this morning.

20 THE COURT: I'm not reading them now.
21 What I'm doing is skimming them to see basic
22 content.

23 There's one here I can hardly read the
24 handwriting.

25 MR. MOODY: That's the best copy we
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 have available.

2 THE COURT: About when in the course of
3 events are we going to get into these documents,
4 these in particular?

5 MR. ROSENBLATT: Late. Certainly we
6 will --

7 THE COURT: Early or late?

8 MR. ROSENBLATT: We will certainly have
9 a break, I would think.

10 THE COURT: Because I'll need to read
11 some of this stuff.

12 All right. Let's bring the jury out.

13 THE BAILIFF: Bringing in the jury.
14 Jurors entering the courtroom.

15 (The jury entered the courtroom and the
16 following proceedings were had:)

17 THE COURT: Good afternoon, folks. As
18 hard as we try, we never get on time. But be
19 advised that we were here working at this point.
20 And as I said, we take advantage of the fact that
21 you are outside the courtroom to get some of the
22 work done we need to get done, and it makes it
23 difficult for you, I understand that.

24 You are wondering what in the world are they
25 doing in there; don't they know we are here? But we

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 are doing the best we can, and we're all aware of
2 that situation so please be advised we can't help it
3 at this point.

4 I think we are about ready to proceed if you
5 will call your next witness, please.

6 MR. ROSENBLATT: Dr. Thomas Houston.
7 WHEREUPON

8 THOMAS HOUSTON, Ph.D.,
9 having been first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ROSENBLATT:

13 Q. Okay. Dr. Houston, would you please tell
14 the jury your full name and your present
15 professional address?

16 A. I'm Dr. Thomas Price Houston. I'm director
17 of the Department of Preventive Medicine and
18 Environmental Health at the American Medical
19 Association in Chicago.

20 Q. Now, yesterday, for example, the jury heard
21 from two witnesses who were Ph.D.s. You are an
22 M.D.?

23 A. That is correct.

24 Q. A medical doctor. Okay. What I plan on
25 doing is eventually bringing you up to date as to

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 when you began with the American Medical Association
2 and what your function is there, but let me start at
3 the beginning in terms of your educational
4 background.

5 You received your undergraduate degree in
6 biology and chemistry from the University of
7 Mississippi?

8 A. Yes.

9 Q. And tell us where you went to medical school
10 and in what year you got your M.D. degree.

11 A. I got my degree in medicine from the
12 University of Mississippi in 1977 and did a
13 residency in family medicine at the University
14 Hospitals there in Jackson, was chief resident and
15 left the program in 1980 after which I was in solo
16 private practice for a year in a small town south of
17 Jackson and then began a career of academic family
18 medicine in a variety of university settings.

19 I started at the Ohio State University, went
20 to Northern Georgia as part of the University of
21 Georgia system in Rome, Georgia, where I was
22 associate director of a family medicine teaching
23 program, and then went to the University of Kansas
24 in Wichita where I was residency director in family
25 medicine and associate professor of family medicine.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 I left there in 1990 to come to my present position
2 at the AMA.

3 Q. Okay. Now, in terms of your residency to
4 become a specialist in the field of family medicine,
5 how many years was that residency program?

6 A. Three years.

7 Q. What is the definition of family medicine?
8 A doctor who is a specialist in family medicine does
9 what?

10 A. Well, family medicine is a specialty that is
11 the chief of the generalist specialties. That is,
12 we don't make distinctions among the patients we see
13 based on their gender or their age, and are the
14 specialty that most people think of when they think
15 of Marcus Welby in taking care of a broad spectrum
16 of patients both in the office and in the hospital,
17 in nursing homes and home visits and the broad base
18 of American medicine.

19 Q. So, family medicine would include little
20 children through very old age?

21 A. Sure. We take care of people from the time
22 they're born until the time they're buried and
23 everything in between.

24 Q. Are you board certified in the field of
25 family medicine?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. I am.

2 Q. And what year did you become board
3 certified?

4 A. In 1980, and then was recertified twice
5 since then.

6 Q. Now, in your present position as director of
7 the Department of Preventive Medicine, when did the
8 field of preventive medicine -- I'm going to say
9 become popular. I don't really mean become popular,
10 but when it became fairly well known and doctors
11 started to choose that as a specialty?

12 A. Preventive medicine actually is a fairly
13 small specialty from the point of view of numbers of
14 people who practice it. I believe it's been
15 certified by the American Board of Medical
16 Specialties for 15 years or so. I don't remember
17 the date exactly that the college was started.

18 And physicians in preventive medicine do a
19 lot of work, just like the name sounds, in health
20 promotion and disease prevention, in occupational
21 medicine and aerospace medicine and other related
22 branches that deal more with large population groups
23 as opposed to individual patients.

24 Where that name comes into the department
25 title that I have with the AMA is more really a

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 bureaucratic function of the AMA as opposed to
2 designating that people working in it have degrees
3 in preventive medicine, but it's more a function of
4 what our department does with regards to educating
5 the public and physicians about a variety of
6 subjects that deal with preinvestigation with
7 environmental health and other issues such as that.

8 Q. Okay. Now, according to your resume, your
9 curriculum vitae, it mentions you are a fellow of
10 both the American Academy of Family Physicians and
11 the American College of Preventive Medicine. What
12 does it mean to be a fellow in those organizations?

13 A. It means that one has achieved a level of
14 distinction by education or by achievement in those
15 particular disciplines to be nominated for and be
16 elected a member or a fellow of those colleges.

17 Q. Your curriculum vitae makes mention of your
18 tobacco control, smoking cessation activities.
19 First of all, tell us, the concept of smoking
20 cessation means what?

21 A. The concept of smoking cessation means the
22 ways that people stop smoking. In other words,
23 people who begin to smoke can stop smoking and we,
24 as physicians, do everything we can to facilitate
25 that process and to make it easy for people to stop.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 And in that context I have spent a good deal
2 of time studying that particular subject in helping
3 people understand the nature of tobacco use and how
4 to quit, including educating the public about this,
5 doing research on smoking cessation and how that
6 works and how it is that people begin smoking and
7 what factors lead to their ability to stop and
8 educating doctors about how they can help their
9 patients stop smoking.

10 Q. Now, is this generally in a doctor-patient
11 relationship where a patient expresses a desire to
12 stop smoking and can't without help, or is it the
13 kind of situation where the doctor simply tries to
14 persuade a smoker to quit on general health
15 principles?

16 A. It's some of both. In general, we have come
17 to the conclusion that in every encounter with
18 people who smoke, it's the duty of the physician to
19 bring up smoking as one of the chief avoidable
20 causes of illness and death and to remind the
21 patient of this fact and to say to the patient, in
22 effect, as your doctor, the most significant step
23 you can make in improving your health would be to
24 quit smoking. Do you want to stop? And help the
25 patient go through the steps that would allow him or

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 her to quit smoking and in general promote that
2 behavior within the office.

3 But another part of that is general
4 education of the public about smoking, about its
5 hazards, about the consequences of tobacco use and
6 encouraging the public generally to stop smoking.

7 Q. Why is that considered so important?

8 A. Well, cigarette use and tobacco use is the
9 leading cause of death in America. Over 400,000
10 people every year die from tobacco-related diseases.
11 And as much as we can, preventing death from
12 avoidable causes -- not that everybody in this room
13 isn't going to die, but preventing death from
14 avoidable causes is something that we feel is very
15 important.

16 If one dies 10 or 15 years early,
17 prematurely, and expends a lot of grief and money
18 and personal family tragedy, if we can prevent that,
19 then we should be all about that business, and
20 that's what preventive medicine helps do.

21 Q. For how long a time have you been involved
22 directly with tobacco controls, smoking cessation,
23 general issues relating to the subject of smoking
24 and health?

25 A. Nearly 20 years. I began my work in that
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 area as an interest in my residency program.

2 Q. Now, in terms of your present position as
3 director of the Department of Preventive Medicine
4 and Environmental Health within the American Medical
5 Association, how much of your time or how much of
6 your focus is devoted to smoking and health issues?

7 A. I'd say about half my time.

8 Q. It's mentioned here in your resume that you
9 are one of about 12 faculty designated by the
10 National Cancer Institute in their national training
11 that train a series of seminars in smoking
12 cessation.

13 Could you explain that?

14 A. A few years ago the National Cancer
15 Institute developed a series of training materials
16 and other sorts of products that were designed to
17 help doctors understand smoking better and help them
18 do a better job of smoking cessation in their
19 practices.

20 It was decided that the best way to get this
21 information out to doctors was to train a group of
22 physicians who would then go out to their local
23 hospitals and medical societies and train other
24 doctors.

25 So, I was asked by the National Cancer
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Institute to be one of the small groups that would
2 do the training sessions for people who would then
3 go back to their hospitals and local medical
4 societies and train a wide number of doctors. And I
5 and 12 or 15 other physicians did this for a number
6 of years for that National Cancer Institute. That
7 program now has stopped, and I suppose the last one
8 of those lectures I did was about a year and a half
9 ago.

10 Q. You were awarded the Surgeon General's
11 medallion by then Surgeon General C. Everett Koop in
12 1988.

13 What was that in recognition of?

14 A. In 19 -- let me get the years straight. In
15 1978 I first began working with an organization
16 known as Doctors Ought to Care, which is a physician
17 advocacy group on tobacco control, and I became one
18 of the three individuals who were national leaders
19 of that organization.

20 It achieved a lot in public education in
21 educating doctors about potential issues related to
22 smoking and in bringing medical societies, organized
23 medical groups to understand more fully the problems
24 of tobacco and health and how the damage due to
25 tobacco's effects on health could be affected by the

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 involvement of doctors and the involvement of
2 medical societies in looking at how tobacco
3 influences health.

4 For a period of eight or ten years, I
5 suppose, we worked very hard at this particular
6 issue, and Dr. Koop recognized the three of us that
7 had formed this organization with this particular
8 award, which is the highest award that the Surgeon
9 General gives.

10 Q. Now, Dr. Houston, what do you say to those
11 people who say, you know, look, this is a free
12 country, people can smoke or they can't smoke. Why
13 is it really your business?

14 Why do you get involved?

15 A. Well, that's an interesting point. A lot of
16 people make a good deal of the choice to smoke and
17 the right to smoke without understanding that the
18 choice to smoke is made by people who are 14, not by
19 people who are basically 30 or 40.

20 MR. WHITING: Objection, Your Honor.

21 MR. COFER: Objection, Your Honor.

22 THE COURT: Overruled.

23 BY MR. ROSENBLATT:

24 Q. You can continue your answer.

25 A. So that the reason, the reason it's
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 important to do this education and to try to change
2 the attitude about smoking is the realization that
3 most people who smoke, most adults who smoke, have
4 begun when they were children and began before they
5 had a true understanding of the consequences
6 ultimately of their choice to smoke when they were
7 14.

8 If somebody at age 20 wants to begin smoking
9 and fully understand the consequences of his or her
10 actions, that's a choice that an individual should
11 have in our society.

12 However, most smokers don't make that choice
13 at age 20 so that education of the public and
14 particularly of young people and of those who
15 influence young people is critically important in
16 this.

17 Q. No, Doctor, in going through some of the
18 presentations that you have made before audiences of
19 physicians either nationally or internationally
20 which is contained in your resume, one topic that
21 you list is --

22 MR. COFER: Excuse me, counsel.
23 There's some problem with the feedback with the
24 microphones.

25 THE COURT: Whose mike? I'll cut down
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 the witness's microphone. Try it now and see what
2 happens.

3 BY MR. ROSENBLATT:

4 Q. As I say, one of those presentations in your
5 resume, the title of which you apparently delivered
6 in Argentina, "Official Misuse of Tobacco Industry
7 Documents: A Trojan Horse Uncovered," what was the
8 subject of that presentation and why did you choose
9 that topic?

10 MR. COFER: Excuse me, counsel. What
11 page are you on on the C.V.?

12 MR. ROSENBLATT: Eight. It's the third
13 from the top. Third down from the top.

14 A. That particular presentation was an account
15 of the State of Kansas and in their defense of a
16 claim by a prisoner in their state system to be
17 protected from environmental tobacco smoke in his
18 cell.

19 MR. COFER: Excuse me, Your Honor.
20 This is hearsay. He's talking about how the State
21 of Kansas defended some unrelated lawsuit and the
22 positions they took, and I think it's irrelevant.

23 THE COURT: I'm not sure how far he's
24 going into it.

25 Did you have some connection with this
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 matter?

2 THE WITNESS: Yes, sir, I did.

3 THE COURT: In what regard?

4 THE WITNESS: I was asked by the
5 plaintiff's lawyer to review material that was
6 submitted in the case to determine where it came
7 from and what its validity was.

8 MR. COFER: Your Honor, in addition to
9 hearsay, relevance objection.

10 THE COURT: Well, it just goes into his
11 background, his expertise in the field, not getting
12 into the substance of what he found.

13 MR. COFER: My concern is he was
14 describing it.

15 THE COURT: I understand. A certain
16 amount of hearsay is admissible in expert testimony.

17 MR. COFER: I understand.

18 THE COURT: Okay. We haven't gone that
19 far afield.

20 BY MR. ROSENBLATT:

21 Q. Just in general, you know, at this point,
22 Doctor, I want you to say the purpose of the
23 presentation and the topic.

24 A. The purpose of the presentation was to point
25 out that, oh, well meaning attorneys or other folks

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 involved in tobacco issues need to scrutinize very
2 carefully the sources of information they get and
3 that the information may not be all that it appears
4 to be.

5 Q. If it comes from the tobacco industry --

6 MR. COFER: Objection, argumentative.

7 THE COURT: Sustain that at this point.

8 MR. COFER: Thank you.

9 BY MR. ROSENBLATT:

10 Q. Well, the title is "Official Misuse of
11 Tobacco Industry Documents." What were you saying
12 about tobacco industry documents in this talk?

13 MR. COFER: Your Honor, same objection,
14 and now I think we are going beyond the witness's
15 background and what happened into the substance of
16 the hearsay. It's unrelated, irrelevant and
17 hearsay.

18 THE COURT: Let's have a talk about
19 that sidebar.

20 (Counsel and the court reporter approached
21 the bench, and the following discussion was held
22 outside the hearing of the jury:)

23 MR. COFER: Here's where he's going
24 with this. Here's where he's going: He testified
25 in his deposition that the State of Kansas, in

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 defending a prisoner case where a prisoner was
2 claiming he breathed secondhand smoke, adopted some
3 materials from a brief in Australia that has nothing
4 to do with this case. It happened in Australia.
5 It's legal arguments that the attorney general for
6 the State of Kansas chose to use.

7 That's what he's going to try to suggest;
8 that the State of Kansas was somehow duped in that
9 they received materials from either -- I think the
10 doctor says my law firm or Covington & Burling; that
11 they didn't know the source and slipped it into
12 their brief and, gee, weren't these people
13 manipulated and fooled.

14 It has nothing to do with this case. It's
15 prejudicial, it's hearsay, it's argumentative.

16 MR. MOODHE: Also, Your Honor, we are
17 getting into the very area that plaintiffs' counsel
18 represented they were going to defer to the end of
19 the case. This doesn't have anything to do with
20 this witness's expert opinions in the area of
21 preventive medicine and ETS causation, which he is
22 principally a witness on. We are slipping --

23 THE COURT: Let me see what he's
24 talking about.

25 MR. COFER: Right here. Even the
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 title, "Official Misuse of Tobacco Industry
2 Documents: A Trojan Horse Uncovered," I mean, that
3 in itself is argumentative. It's designed to
4 prejudice the jury.

5 THE COURT: Not necessarily.

6 MR. ROSENBLATT: I don't think when he
7 wrote this he was trying to prejudice the jury.

8 THE COURT: Let me see if I understand.
9 These are articles he wrote?

10 MS. ROSENBLATT: Yes, presentations.

11 MR. COFER: In Argentina.

12 THE COURT: Let me see what he says.
13 He spoke, and this is the subject matter of his talk
14 and in that talk he talked about the Kansas case?

15 MR. COFER: Yes.

16 THE COURT: Only them?

17 MR. COFER: I don't know if he talked
18 about it only, but that's what he testified in his
19 deposition. The State of Kansas and having to be
20 careful the source of the information that you get
21 from the tobacco companies.

22 THE COURT: Okay.

23 MS. ROSENBLATT: This is part of his
24 expertise in April of '92. It was before we even
25 had the arguments on whether it could be a class on

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 April 16 of '92. It was the first few months this
2 was filed.

3 Part of his expertise, part of his
4 background, experts rely on hearsay all the time.
5 He's going to explain his position on the
6 presentation he made, and it's not coming in for the
7 truth. It's just coming in for part of his
8 background and experience.

9 MR. COFER: Here's the problem: It's
10 the prejudicial/probative value. They have
11 established his qualifications as a physician. They
12 have established he's head of preventive medicine.
13 Obviously he has strong feelings about smoking and
14 health. He's taking positions around the world on
15 smoking and health relating to incidents that have
16 nothing to do with this case.

17 They are trying to back door irrelevant,
18 unrelated incidents of smoking and health and his
19 lectures, particularly in front of jury, to
20 particularly say aren't these people bad people.

21 MR. WHITING: Your Honor, may I add one
22 thing? Plaintiff is saying he's an expert; this is
23 part of his expertise. There has been nothing in
24 his credentials that has indicated he has any
25 expertise in evaluating documents and determining

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 anything about that. He is a practitioner in family
2 medicine. He has years of academic training in
3 family medicine. There's nothing that has qualified
4 him.

5 THE COURT: That's what he wanted to
6 bring out, that he had some expertise in the field
7 of ferreting out this information. If that's what
8 his curriculum vitae shows and that's part of his
9 experiences, well, let's hear about it.

10 MR. MOODHE: Your Honor, I don't think
11 there is such a thing as someone who is an expert in
12 ferreting out information, which is basically what
13 they are trying to say.

14 THE COURT: It may be his job, as far
15 as I know.

16 MR. MOODHE: His expertise is as a
17 medical doctor. If he wants to comment on medical
18 and scientific information --

19 THE COURT: There are a lot of medical
20 doctors, I would assume, that have expertise in
21 certain fields. They may be called upon to look at
22 other things to see if those things comport with
23 expected medical standards, okay?

24 In that regard, he may be ferreting out
25 false information, misleading information and other

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 things, and he becomes an expert in this kind of
2 thing. I don't know. He hasn't talked about it.
3 We'll find out if he does.

4 If that's part of his job or secondary or an
5 adjunct part of his job, so be it. And if he's
6 lectured and given talks on it, that makes him more
7 of an expert than I am, so we'll find out.

8 MR. MOODHE: We are slipping into him
9 interpreting the evidence.

10 THE COURT: He didn't say anything
11 about what he found yet or anything else. But if
12 that's part of his job to ferret this stuff out,
13 we'll find out if there has been any misleading or
14 false information being produced, so be it if that's
15 what he does.

16 (The following proceedings were held within
17 the hearing of the jury:)

18 BY MR. ROSENBLATT:

19 Q. Dr. Houston, you became the director of the
20 Department of Preventive Medicine and Environmental
21 Health at the American Medical Association what
22 year?

23 A. 1990.

24 Q. And you have maintained that position ever
25 since?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. Yes.

2 Q. Now, in that capacity, do you have occasion
3 to study the public positions that various tobacco
4 companies take with respect to legislation, take
5 with respect to what they say to the public about
6 Surgeon Generals' reports, the report of the
7 Environmental Protection Agency and that kind of
8 thing?

9 A. I do.

10 Q. And is it part of your function to zero in
11 on representations made by the tobacco industry to
12 the public which you considered to be unscientific
13 and which you consider to be misleading?

14 A. Part of my function is to try to understand
15 the forces that impact on tobacco consumption and
16 part of that has to do with the way the tobacco
17 industry represents its products, the way the
18 tobacco industry influences public policy and the
19 way that the scientific process is affected by a
20 variety of issues including the tobacco industry.

21 Q. And how, in your opinion, has the scientific
22 process been affected by the public positions that
23 the tobacco industry has taken on issues relating to
24 smoking and health and secondhand smoke?

25 MR. COFER: Excuse me. Objection.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 This is not a proper subject of expert opinion nor
2 has this person been qualified, even if it were, to
3 give his opinions.

4 THE COURT: I think he just answered
5 the question, that that was part of his function.
6 That being part of his function, then I think it's
7 appropriate.

8 Overruled.

9 BY MR. ROSENBLATT:

10 Q. You may answer the question, Doctor.

11 A. Could you repeat it?

12 (The above-referenced question was read back
13 by the court reporter.)

14 THE WITNESS: Well, that's a long story
15 that goes back many years in relating to how the
16 tobacco industry has responded, for example, to the
17 release of Surgeon Generals' reports to reports of
18 the adverse effects of the smoke and health in the
19 literature and in reports about that in the public
20 press and in the way the tobacco industry has
21 approached through research funding as well as
22 through harassment of legitimate scientists of the
23 whole issue of tobacco.

24 Over the years, a variety of scientific
25 reports have been released about tobacco and health,

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 the most famous of them and the one that people
2 think about the most probably are the Surgeon
3 Generals' reports that go back to 1963-64 and those
4 have been greeted almost uniformly by the tobacco
5 industry as being dismissed saying, well, that's all
6 very interesting but we need more information; we
7 really don't know what causes cancer; we really
8 don't know what causes heart disease; nicotine isn't
9 addictive, and we need more research.

10 That's been the public posture of the
11 industry for a decade, and it hasn't changed as far
12 as I can tell recently with one exception of the
13 Liggett company.

14 The industry has positioned itself in the
15 public as creating with its own witnesses at
16 hearings and its own stories that over the years it
17 has arranged to be placed in the popular press that
18 there really is a great amount of controversy in the
19 scientific community about the effects of the
20 tobacco on health; that smoking doesn't really cause
21 lung cancer; that there are all manner of other
22 things in the environment and in diet and other
23 things that one must take into account when it comes
24 to the effects of tobacco on disease. The way the
25 industry has positioned itself in the public, in

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 newspaper advertising, in magazines and as I said in
2 approaching research, is that in 1954, for
3 example --

4 MR. COFER: Excuse me, Your Honor, and
5 I apologize for interrupting, Dr. Houston.

6 THE COURT: I can't hear you.

7 MR. COFER: Excuse me, Your Honor. I
8 was apologizing for interrupting.

9 At this point with this narrative response,
10 there is no way I can interject appropriate
11 objections. I'd ask that we return to the judicial
12 format of questions and answers rather than the
13 lecture format of a witness that I don't believe is
14 qualified.

15 THE COURT: If it happens to be part of
16 the answer, that's a different story. He asked how
17 has it changed, so it sort of calls for an --

18 MR. ROSENBLATT: My question was quite
19 broad.

20 MR. COFER: My problem is the question
21 was five pages ago, and I'd like an opportunity to
22 listen to specific questions and interject
23 objections as appropriate.

24 THE COURT: That may not necessarily be
25 possible.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. COFER: Object to the narrative
2 response.

3 THE COURT: Objection overruled.

4 BY MR. ROSENBLATT:

5 Q. You can continue your answer, Doctor. You
6 were talking about 1954.

7 A. As I said, it's a long answer because it's a
8 broad subject that goes back that far. In the
9 1950s, for example, 1954, the tobacco industry put
10 in newspapers and magazines a statement, which to
11 the American people, in response to the first big
12 studies on lung cancer in men, essentially said we
13 want to get to the bottom of this too; we are
14 interested in the health of the public; we are a
15 responsible set of companies; we want to find the
16 answers and we will do research that will get to the
17 bottom of whether tobacco causes lung cancer and is
18 associated with any other problems.

19 Since then --

20 MR. COFER: Excuse me, Your Honor.
21 Again, Doctor, I apologize for interrupting you.

22 May we have a sidebar, please?

23 (Counsel and the court reporter approached
24 the bench, and the following discussion was held
25 outside the hearing of the jury:)

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. COFER: Your Honor, at this point
2 the doctor --
3 MR. ROSENBLATT: If at first you don't
4 succeed, I mean --
5 THE COURT: Counsel --
6 MR. COFER: Tell me when you are
7 through with interrupting and I'll continue.
8 THE COURT: Don't interrupt.
9 MR. COFER: At this point the witness
10 has now become a historian as well. He's talking
11 about what happened in 1954, the intent of 1954. He
12 hadn't even gone to medical school then. He didn't
13 start college until 1969. What they are doing is
14 using this witness, because he works for the AMA and
15 all, to get all this hearsay in. He has no
16 firsthand knowledge.
17 We had the big argument over The Cigarette
18 Papers and all this anti-tobacco that plaintiffs
19 want to bring in to cover with this jury. This
20 witness does not have personal knowledge, it's
21 hearsay, and that's why I object to this narrative
22 response because they say, well, gee, what have they
23 done, and they wind him up and let him go.
24 THE COURT: I don't have any problem
25 with somebody giving a little history lesson. There
 COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
 COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 are people who are experts in the field of ancient
2 history who aren't alive, but they still know all
3 about it, so I don't have any problem with that.

4 I really don't want him to go on and on and
5 on.

6 MR. ROSENBLATT: I agree.

7 THE COURT: I think we'll stop at this
8 point and get into question and answer.

9 MR. COFER: Thank you.

10 THE COURT: If he's going to go back to
11 1954, maybe bring him up to date.

12 MR. ROSENBLATT: I'll ask him a summary
13 kind of question now.

14 MR. COFER: And let me say, I
15 understand that it is kind of hard to decide where
16 do you testify and what he can't. That's why I was
17 hoping that counsel would ask specific questions, so
18 I won't interrupt if not necessary.

19 THE COURT: I understand your position,
20 but on the other hand, there are some questions and
21 answers that it's necessary.

22 MR. WHITING: Your Honor, may I add
23 while we are here, I think he's also testifying
24 about the state of mind of the industry, and no
25 expert can testify about the state of mind.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE COURT: I'm not sure he testified
2 about state of mind yet. It's only what is obvious
3 in the writings or the publications.

4 MR. WHITING: When he starts talking
5 about what the industry intended and what the notice
6 of the industry were --

7 THE COURT: We are not talking about
8 the Frank Statement.

9 MR. COFER: If he hasn't done it, he's
10 on his way.

11 MR. ROSS: Other than with respect to
12 the Frank Statement, this witness is giving an
13 opinion about a course of conduct which has never
14 been proven in this case, and even this witness is
15 not testifying about any specific events where
16 somebody said something. It's all just this is what
17 happened by the industry with absolutely no
18 identification of who said what to whom and then, if
19 that's admissible testimony in this case, it's an
20 opinion on a course of conduct where the conduct has
21 never been proven.

22 THE COURT: I think, if somebody is
23 familiar with the industry, they can testify as to
24 the historic events that took place and doesn't have
25 to prove each and every one of them as we go along.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Overrule the objection.

2 (The following proceedings were held within
3 the hearing of the jury:)

4 THE COURT: Ask questions.

5 BY MR. ROSENBLATT:

6 Q. Okay. Dr Houston, in terms of controversy
7 that you were describing, in terms of the tobacco
8 documents you have reviewed during the past 20
9 years, has part of the tobacco industry in terms of
10 what they have actually done from your reading of
11 the documents and from their responses to the
12 various Surgeon Generals' reports and the other
13 science coming out saying that cigarette smoking is
14 harmful, has their strategy been to create and keep
15 alive a controversy?

16 MR. MOODHE: Objection, Your Honor.
17 It's the very issue we agreed --

18 THE COURT: Well, an instruction to the
19 jury: We are not getting into the minds and the
20 motive of the tobacco companies and tobacco
21 industry. But as he perceived them, the position
22 that he's in --

23 MR. ROSENBLATT: Exactly.

24 MR. MOODHE: Excuse me, Your Honor.

25 There's a further problem which is the issues we

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 talked about before the jury came in, the question
2 broadly asks about from his reading of all these
3 documents.

4 THE COURT: No, that has nothing to do
5 with the issue at the moment.

6 BY MR. ROSENBLATT:

7 Q. So, from your perception, from your reading
8 of the documents, tell us about this controversy
9 concept.

10 A. Let me give a couple brief examples. In the
11 mid-eighties, a famous trial on heart disease called
12 the MRFIT trial was released. This is a
13 particular --

14 Q. Not a court trial but --

15 A. It's a study of a broad number of people,
16 and the name of it was MRFIT, M-R-F-I-T, and it had
17 to do with a multiple series of conditions and of
18 risk factors that had to do with heart disease. And
19 the trial was released with great fanfare showing
20 that high cholesterol and high blood pressure and
21 cigarette smoking, among other things, affected
22 heart disease and that, by lowering cholesterol and
23 controlling blood pressure and stopping smoking, we
24 could have an impact and reduce the rate of heart
25 disease.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 The tobacco industry responded to the MRFIT
2 trial by putting advertisements in newspapers
3 claiming that the MRFIT trial showed that cigarette
4 smoking didn't affect heart disease and that there
5 wasn't really much of a relationship between
6 cigarette smoking and heart disease and stopping
7 smoking didn't really have much of an affect on
8 longevity when it came to heart attacks. That's an
9 example.

10 After the release of the EPA documents on
11 environmental tobacco smoke, other full-page
12 advertisements and campaigns by the tobacco
13 companies were begun that did a couple of different
14 things.

15 One of the effects of these advertisements
16 and pronouncements to the public was that the
17 science was fraud, that the EPA had it all wrong in
18 the way they had done their math, and that the
19 studies that the EPA purported to show environmental
20 tobacco smoke causing disease and lung cancer
21 specifically were fraud and couldn't be relied on.

22 But the other thing they did is began a
23 public campaign -- and they had actually started
24 this before the EPA -- of accommodation in that
25 essentially all we need to do to resolve the

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 problems related to passive smoking is for people to
2 be nice to each other and that it's fine to have
3 smoking sections and nonsmoking sections in
4 restaurants, we can live with each other, we can
5 accommodate each other.

6 I have been in many restaurants, for
7 example, that have --

8 Q. Let me just ask you this: The campaign of
9 accommodation, you know, smokers and nonsmokers
10 should get along, they should be nice to each other,
11 is that scientifically sound with respect to the
12 health consequences of secondhand smoke on a
13 nonsmoker?

14 A. Not at all.

15 Q. Why not?

16 A. Because the laws of physics in a restaurant
17 don't stop at the boundary which can be just as
18 insignificant as this railing here. Cigarette smoke
19 doesn't stop at that railing just because you have a
20 sign right here that says no smoking section.

21 Q. The smoke does, in fact, circulate through
22 the whole restaurant. There may be less of it at
23 far boundaries of a no smoking section than at the
24 border, but the smoke don't stop.

25 The point of the campaign was to put in the
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 minds of customers and in the minds of restaurant
2 owners and in the minds of policy makers that you
3 don't really need --

4 MR. WHITING: Your Honor, I object.
5 May we approach?

6 THE COURT: No. It's not necessary.
7 Overruled.

8 THE WITNESS: You don't need all the
9 regulations that were starting to come down with
10 nonsmokers' rights movements in California and
11 elsewhere. You don't need to regulate tobacco smoke
12 indoors. Accommodation is all we need. We just
13 will have smoking and nonsmoking sections and
14 everything will be fine, and that was the thrust
15 from the point of view of what the public reading
16 this would perceive.

17 BY MR. ROSENBLATT:

18 Q. Now, Dr. Houston, from the standpoint of a
19 controversy in terms of the medical and scientific
20 communities in the United States -- and by the way,
21 how many members are there in the American Medical
22 Association?

23 A. There are about 300,000.

24 Q. All doctors from all over the United States?

25 A. Doctors, medical students and resident

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 physicians, yes.

2 Q. From the standpoint of the medical and
3 scientific communities in the United States, is
4 there any controversy at all on the issue of whether
5 smoking causes disease?

6 A. There's not.

7 Q. In those same communities, the scientific
8 and medical communities across the United States, is
9 there any controversy within those communities on
10 the fundamental issue of whether secondhand smoke
11 causes disease?

12 A. There's not that kind of controversy. And
13 let me give you an example of what I mean by lack of
14 controversy. The Harrison's Textbook of Internal
15 Medicine is the best known internal medicine
16 textbook in the world.

17 MR. COFER: Excuse me, Doctor.

18 THE COURT: I'll sustain that.

19 MR. ROSENBLATT: Thank you, Your Honor.

20 THE COURT: Don't make any reference to
21 any treatise.

22 THE WITNESS: Excuse me?

23 THE COURT: Don't make any reference to
24 any book or medical treatise.

25 BY MR. ROSENBLATT:

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. Without giving that particular example or
2 referring to a treatise, with respect to the issue
3 of secondhand smoke in the scientific and medical
4 communities causing disease, there is no
5 controversy?

6 A. It's broadly accepted.

7 Q. Well, I'm not asking you to look into the
8 heads or to discuss with me the motives of the
9 tobacco executives, but from your standpoint having
10 expertise in reviewing the documents from your
11 perception, what is the tobacco industry gaining by
12 keeping alive a nonexistent scientific controversy?

13 MR. COFER: Excuse me. Objection.
14 Calls for speculation, not a subject of expert
15 testimony, beyond this witness's expertise.

16 THE COURT: I'll sustain that.
17 BY MR. ROSENBLATT:

18 Q. Have you had occasion to study tobacco
19 industry advertising in connection with your
20 position as director of the Department of Preventive
21 Medicine and Environmental Health at the American
22 Medical Association?

23 A. I have, and I've been a student of that
24 particular subject for a number of years.

25 Q. Do you consider that you have expertise in
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 the field of tobacco advertising?

2 MR. COFER: You can answer that
3 question. I'm just waiting for the next one, but go
4 ahead.

5 MR. ROSENBLATT: Don't you get so
6 polite, doctor, you know. Unless you hear the word,
7 you know, just answer the question.

8 A. Oh, yes. I've studied tobacco advertising
9 and have read a lot about that over the years. I
10 have attended a lot of conferences of which that was
11 the subject, and I know a good deal about that
12 particular issue.

13 MR. COFER: Let me interrupt now so I
14 don't interrupt counsel's question. If the doctor
15 intends to offer opinions on the effect, impact or
16 intent of advertising, I object for two reasons.
17 One --

18 THE COURT: Well, I don't want to talk
19 about it right now.

20 MR. ROSENBLATT: I'm not going any
21 further on that right now.

22 MR. COFER: Okay.

23 THE COURT: Okay.

24 MR. COFER: I'll --

25 THE COURT: Hold off your objection.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. COFER: Okay. I'll listen.

2 THE COURT: Now you know the enemy is
3 entrenched there and we're over here, and we'll see
4 where we go. Right. You know there's going to be
5 an objection coming down the line.

6 MR. ROSENBLATT: That I can always
7 depend.

8 BY MR. ROSENBLATT:

9 Q. On Page 12 of your resume is an article
10 authored by you, the title of which is
11 "Environmental Tobacco Smoke: The Silent Killer,"
12 which appeared in the Journal of Family Practice in
13 1991. This is an article written by you. And what
14 was the thrust of that article?

15 A. That was a summary of the -- of issues
16 related to environmental tobacco smoke as they were
17 known in the science as of 1991, pointing out,
18 again, that environmental tobacco smoke is and
19 should be a concern to physicians and, particularly,
20 to family doctors, as it regards the health of
21 children and the health of their adult patients, as
22 well.

23 And the thrust of the article was to
24 encourage physicians to help their patients
25 understand this, to create smoke-free environments

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 in the home, to help their patients understand the
2 need for their children not to be exposed to smoke,
3 and for other adults not to be exposed to smoke and
4 for physicians to become involved in, as an advocacy
5 point of view, the regulatory process that would
6 protect their patients from the unwanted hazards of
7 secondhand smoke.

8 Q. In terms of the field of your specialty, in
9 terms of your work at the American Medical
10 Association, do you get involved in trying to
11 ascertain the level of public knowledge concerning a
12 real legitimate health problem?

13 A. Yes. The AMA engages in public surveys of
14 health risks, and we try to stay abreast of the
15 literature and of public surveys and other issues
16 that relate to what people think about different
17 kinds of illnesses, different sorts of public health
18 problems, what they worry about. In other words,
19 women worry a lot about dying of breast cancer.
20 What are the kinds of educational programs that
21 doctors can do to educate women about the need for
22 getting mammograms. That's the sort of thing that
23 my department, in conjunction with our department of
24 women and minority health, does.

25 Q. From a medical standpoint, what is the
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 greater danger to women, lung cancer or breast
2 cancer?

3 A. More women get breast cancer every year, but
4 more women die from lung cancer every year.

5 Q. Is that fact widely understood by women in
6 this country, do you feel?

7 A. Unfortunately it's not.

8 Q. And why is that?

9 A. They're probably several reasons for it.
10 There was a USA Today poll a couple of years ago
11 that asked some of these very questions, and the
12 fear that women had or the thought that they had
13 about whether they had a greater chance of dying
14 from breast cancer or other kinds of diseases was
15 one of the points of this particular survey.

16 Women believe that they had an extremely
17 high chance, about five times the actual occurrence
18 rate, of dying of breast cancer.

19 First of all, there's been a lot of
20 publicity about breast cancer in the women's press,
21 in Cosmopolitan, in newspapers. The availability of
22 mammograms and their increasing sophistication,
23 their ability to find breast tumors at tiny, tiny
24 sizes has gotten a lot of attention. And women are
25 afraid of breast cancer because they don't know how

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 they get it. It's being understood better now that
2 there's some familial tendency to breast cancer, and
3 there may be some influence of a high fat diet on
4 breast cancer, but, in general, women are afraid of
5 this because they're not sure of how it's going to
6 strike or who it's going to strike.

7 As it relates then to cigarette smoke, and
8 smoking and lung cancer, women particularly don't
9 feel a personal risk from smoking. Many smokers
10 don't feel that personal risk at all anyway, but for
11 whatever reason in a variety of surveys, women don't
12 feel the personalization of that risk as it applies
13 to them.

14 MR. COFER: Excuse me, Your Honor. At
15 this point we have now gone beyond his expertise.
16 He's testifying as to what other people feel. He's
17 not a psychologist or psychiatrist. He's not an
18 expert in this.

19 THE COURT: It's based upon the
20 literature put out by the AMA. Other than that, if
21 it's something that's just general, then I would
22 agree. If it's based on scientific --

23 MR. COFER: And counsel has not laid
24 that foundation.

25 BY MR. ROSENBLATT:

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. Well, what is that based on, doctor, the
2 answer that you're in the middle of? From whence
3 cometh that information?

4 A. That comes from information based on surveys
5 of smokers over the years, looking at -- as I told
6 you before, I've spent a lot of time in smoking
7 cessation. One of the things that we try to do is
8 find out why it is that people don't stop, what is
9 it that keeps people smoking, given that they know
10 at least to some extent that there's a health risk
11 associated with continued use of tobacco.

12 And one of the reasons is that they don't
13 personalize the risk. They don't think that they
14 are personally going to die from cigarette smoking.
15 They don't internalize the risk, and they don't
16 think that they're the one that's going to die.
17 They think it's going to happen to somebody else.

18 The point is that women believe this about
19 lung cancer, that they don't think they're going to
20 die from it. And publicity about lung cancer in the
21 popular press, in women's magazines, has not
22 received the attention that breast cancer has.

23 Q. And why is that?

24 A. There are a lot of reasons for that, but one
25 of them, as pointed out in the literature, is the

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 effect of cigarette advertising dollars on the
2 coverage of lung cancer and other cigarette-related
3 illnesses in women's magazines.

4 MR. COFER: Excuse me. Objection, Your
5 Honor. Lack of foundation.

6 THE COURT: All right.

7 MR. COFER: Beyond his expertise.

8 THE COURT: Gentlemen.

9 MR. COFER: And irrelevant.

10 (Counsel and the court reporter approached
11 the bench, and the following discussion was held
12 outside the hearing of the jury:)

13 THE COURT: He's getting into the area
14 of amount of money spent.

15 MR. ROSENBLATT: That's not where I'm
16 going.

17 MR. COFER: That's the problem. He's
18 blurting out these nice, little jewels designed to
19 prejudice the jury. He's telling us why women --

20 THE COURT: I'll sustain the objection.
21 You're not going to get into the dollars.

22 MR. ROSENBLATT: No, I'm not getting --
23 I'll tell you exactly where I'm going. I think it's
24 absolutely, perfectly legitimate.

25 What he's told me is that the reason why

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 women are misinformed and believe that there's a
2 much greater threat of breast cancer than lung
3 cancer, which he says is the opposite of the fact,
4 is because the -- all the popular women's magazines
5 who receive tobacco advertising don't print the
6 articles that would properly inform them. It's not
7 a question --

8 MR. MOODHE: That's not opinion; that's
9 based on the fact that --

10 MR. ROSENBLATT: It's a question of
11 advertising and what he has found empirically. What
12 he's found empirically is that the women's magazines
13 who carry cigarette advertising do not accept
14 articles that talk about lung cancer.

15 THE COURT: What's that based on?

16 MR. COFER: Exactly.

17 MR. ROSENBLATT: His reading and
18 studying of these issues.

19 MR. ROSS: That's totally speculative.

20 MR. ROSENBLATT: He knows this.

21 THE COURT: You'll have to do a little
22 bit more than that. I think we will do much better
23 if we voir dire the witness.

24 MR. COFER: Exactly.

25 THE COURT: Why don't we excuse the

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 jury.

2 (The following proceedings were held within
3 the hearing of the jury:)

4 THE COURT: Ladies and gentlemen, would
5 you please go into the jury room. Do not discuss
6 the case.

7 (The jury exited the courtroom.)

8 THE COURT: Okay. Do you want to get
9 into that area? We'll have voir dire.

10 MR. ROSENBLATT: Should I question the
11 doctor or --

12 MR. COFER: Tell me what --

13 MR. ROSENBLATT: Okay. I'll tell you
14 where I was going. Dr. Houston, as part of his
15 work, is very familiar with --

16 THE COURT: Let's find out from him
17 first.

18 MR. ROSENBLATT: Okay.

19 VOIR DIRE EXAMINATION

20 BY MR. COFER:

21 Q. Well, the opinion that Mr. Rosenblatt said
22 that you were going to give, doctor, to make it
23 clear is that women underperceive lung cancer risk
24 is because tobacco companies give money to
25 magazines, and the quid pro quo is that they don't

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 write anything bad about lung cancer?

2 MR. ROSENBLATT: That's not -- I didn't
3 put it --

4 THE COURT: That wasn't what it was.

5 MR. ROSENBLATT: I didn't put it that
6 way.

7 THE COURT: My understanding of what
8 was said at sidebar was something far different than
9 that. So I think what we're going to do is first
10 find out what the witness believes to be --

11 MR. ROSENBLATT: Fine.

12 THE COURT: -- the reasons, and then we
13 can get into it further. Okay. Go ahead.

14 VOIR DIRE EXAMINATION

15 BY MR. ROSENBLATT:

16 Q. Okay. Doctor, you had made the point, as I
17 understand it, that women in this country are much
18 more afraid of dying from breast cancer than from
19 lung cancer, when the scientific reality is that
20 they have a much greater chance or a greater chance
21 of dying from lung cancer than from breast cancer.

22 A. Yes.

23 Q. And I was going to ask you, well, from
24 whence cometh that ignorance, in terms of the
25 women's magazines, specifically?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. The ignorance comes from a lot of different
2 places. One is denial that it's going to happen to
3 them, but the other is that there has been a lot
4 less information in places where women get their
5 health information. Women get their health
6 information from Cosmopolitan and from the beauty
7 shop magazines and the things that they pick up to
8 read that are certainly not scientific journals.

9 The lack of coverage on tobacco and health
10 in those particular journals has been well
11 documented by Kenneth Warner and Elizabeth Whelan
12 and others as compared to breast cancer, as compared
13 to other sorts of illnesses: Sexually-transmitted
14 diseases, AIDS.

15 Tobacco, as a subject, has been covered
16 much, much less. And the conclusions that others
17 have drawn is that there is an effect of tobacco
18 advertising as a self-censoring device, so that the
19 publishers and the editors of those journals don't,
20 in fact, print the stories that relate to tobacco
21 and health.

22 An example of that is the failure of entries
23 to a particular prize that the AMA sponsors on
24 tobacco journalism. We have a journalism prize in
25 tobacco and health coverage for magazines that do

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 accept tobacco advertising. We have a cash prize,
2 plus a free trip to a journalism conference. And in
3 the last 18 months, we haven't had an entry.

4 Q. To what do you attribute the lack of an
5 entry?

6 A. The lack of an entry? The lack of a
7 published article that deals with tobacco and health
8 in those magazines. It hasn't been there.

9 Q. And the conclusion -- and the conclusion
10 that you draw, what is the impact of tobacco
11 advertising in women's magazines upon the
12 acceptability of negative articles about tobacco
13 actually being published in those magazines?

14 A. Now, there have been -- there have been
15 interviews with the editors, Grace Slick and others,
16 who are editors of those -- not Grace Slick, what's
17 her -- what's -- I forget her name. At any rate,
18 the editors of these --

19 Q. Helen Gurley?

20 A. Helen Gurley Brown. That's her. And others
21 saying, basically, you don't bite the hand that
22 feeds you.

23 THE COURT: Okay. Question?

24 MR. COFER: Actually I think Grace
25 Slick is the lead singer for Jefferson Airplane.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE WITNESS: Yes. That's correct.

2 MR. ROSENBLATT: You've shown off
3 again.

4 MR. COFER: I know. But the jury
5 didn't hear.

6 In addition, there's nothing in his expert
7 disclosure about advertising.

8 VOIR DIRE EXAMINATION (CONTINUED)

9 BY MR. COFER:

10 Q. Doctor, what's your basis for your testimony
11 that women get their health information from
12 magazines like Cosmo and, I assume, Glamour and
13 other women's magazines?

14 A. Oh, part of it is in looking at the --
15 again, survey data of what women read. And this
16 comes from the AMA, as well as other sources of
17 surveys of health information sources: What is it
18 that -- what is it that the public looks at in order
19 to get their health information?

20 The reason this is important to us is in
21 trying to craft ways that doctors' offices can be a
22 better source of health information for their
23 patients. And so we're trying to see what the
24 competitors are. And, in fact, beauty shops and
25 barbar shops and other places do a pretty good job

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 of having magazines out there that people read.

2 Q. Tell me specifically what survey you're
3 relying on for that information? Where was it
4 published, when was it published, and do you have a
5 copy of it with you?

6 A. I can't tell you those things specifically
7 today. I don't have a copy with me.

8 Q. In fact, the only survey that you mentioned
9 so far was in USA Today; right?

10 A. That's correct.

11 Q. Now, has that changed over time? When was
12 this true? How long has it been true? Have the
13 magazines changed? Has the coverage of lung cancer
14 versus breast cancer changed in the last, let's say,
15 35 years, which is the period of this class?

16 A. Oh, I can't speak to -- I can't speak to 35
17 years back. The articles I've read by Warner and
18 Whelan don't go back that far.

19 Q. So you're relying on articles by Kenneth
20 Warner and Elizabeth Whelan for your opinion;
21 correct?

22 A. Partly, yes.

23 Q. So these are conclusions others have drawn;
24 right?

25 A. Yes.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. Now, let me ask you this. Could one basis
2 also be in terms of the concern that women have
3 between lung cancer and breast cancer is that breast
4 cancer is disfiguring?

5 A. I'm sure.

6 Q. There's an awful lot of attention on that
7 because of breast implants and all that's accrued
8 from breast implants; correct, doctor?

9 A. It could be yes.

10 MR. COFER: Thank you.

11 Your Honor, lack of foundation. It's
12 not --

13 THE COURT: I'll tell you --

14 MR. COFER: It's not in his disclosure.
15 He is relying on opinions of others. I can't
16 cross-examine him. It's classic hearsay.

17 THE COURT: I agree with you. It is
18 highly speculative, and it doesn't have a foundation
19 in court at this point. And I think it has to be an
20 interpretation of things that would be in the minds
21 of others, such as the editors and so forth, which
22 is not in this case.

23 I'll sustain the objection as it relates to
24 that. Suffice it to say that his experience would
25 be that there's less being written about the dangers

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 of lung cancer, vis-a-vis smoking than it is
2 vis-a-vis breast cancer.

3 So if that's where we're at, then we can
4 accept it as that.

5 MR. COFER: Could we also have counsel
6 lay a predicate that the doctor regularly reads
7 women's magazines so that he's competent and
8 qualified to make that comparison? Otherwise, it's
9 just based on speculation.

10 THE WITNESS: I do, in fact.

11 MR. COFER: You do? What ones do you
12 read?

13 THE WITNESS: I read Glamour and Cosmo,
14 Redbook from time to time, among other things,
15 tracking tobacco industry advertising.

16 MR. COFER: Cover to cover?

17 THE WITNESS: Oh, not cover to cover.
18 I don't read the ones about make-up.

19 MR. COFER: Do you subscribe to them,
20 or just when you happen to be in a beauty shop?

21 THE COURT: Oh, I'm not going to get
22 into this.

23 MR. COFER: You said we're supposed to
24 have some fun.

25 THE COURT: All right. Insofar as you
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 can testify in your experience and your studies and
2 all of that, within your field, that it is apparent
3 to you that there is less being written about the
4 dangers of lung cancer vis-a-vis smoking than is
5 being written about breast cancer, suffice it to
6 say. Okay.

7 Need a couple minutes? They took a break.
8 We can take a break.

9 Do not discuss your testimony with anyone.
10 (A brief recess was taken.)

11 THE COURT: Counsel, could we
12 anticipate that we can complete this witness today?

13 MR. ROSENBLATT: Yes, Judge. I mean,
14 we might have to work a little after 5:00.

15 MS. ROSENBLATT: He has a flight he
16 needs to leave for.

17 THE COURT: Yes. That's what I'm
18 trying to envision. What time is your flight, sir?

19 THE WITNESS: 7:00.

20 THE COURT: All right. Keep it in
21 mind. We'll do what we can.

22 Let's bring the jury out, please.

23 (The jury entered the courtroom.)

24 THE COURT: All right. Have a seat,
25 folks.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Okay. Let's proceed.

2 DIRECT EXAMINATION (CONTINUED)

3 BY MR. ROSENBLATT:

4 Q. Dr. Houston, in terms of your review and
5 analysis of the popular press magazines, women's
6 magazines in particular, over the last several
7 years, has a lot less been written about the lung
8 cancer threat to women, as opposed to the breast
9 cancer threat to women?

10 A. Yes. There's been considerably less
11 coverage of tobacco-related diseases than other
12 causes of illness among women.

13 Q. And from a purely scientific standpoint, the
14 cause -- the major cause of death between lung
15 cancer in women and breast cancer in women is lung
16 cancer; correct?

17 A. That's correct. Lung cancer became the
18 largest cancer killer among women in 1986 or so.

19 Q. Do you when do you think the average
20 American came to appreciate that by smoking in the
21 presence of a nonsmoker, whether it was a wife,
22 husband, kids, friends, that that habit could cause
23 the nonsmoker to develop lung cancer or some other
24 disease?

25 MR. COFER: Objection. Lack of
 COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
 COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 foundation. Calls for speculation.

2 THE COURT: I think you have to lay a
3 predicate on that one.

4 BY MR. ROSENBLATT:

5 Q. Well, based on your education, background,
6 training, based on your 20 years of looking at
7 smoking and health issues, based on your years of
8 studying tobacco advertising, tobacco responses to
9 science, Surgeon General's reports and others, and
10 the various polls of the American Medical
11 Association and your position at the American
12 Medical Association, do you feel that you have the
13 background and the understanding to express an
14 opinion on this topic?

15 A. Yes, I do, for the most part.

16 Q. So what is -- what is your answer to that
17 question, as to when you feel that the average
18 smoker became aware or appreciated the fact that
19 that habit could cause disease in a nonsmoker?

20 MR. COFER: Excuse me, doctor.

21 When he feels it happened is irrelevant, and
22 he doesn't have knowledge as to when it happened.

23 THE COURT: Yes. You'd really have to
24 get into a little bit more knowledge --

25 MR. COFER: Exactly.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE COURT: -- and basis of this before
2 we get into it.

3 BY MR. ROSENBLATT:

4 Q. So, on what would you be basing that answer?
5 Before you give us the answer --

6 THE COURT: In other words, what the
7 Court is concerned about is the average American,
8 unless the average American was polled or there was
9 some reference made to it. And that's what we're
10 trying to find out at this point.

11 BY MR. ROSENBLATT:

12 Q. Well, I'm really talking -- I'm really
13 talking about the level of understanding that you
14 believe smokers have or had in recent years about
15 the dangers, the health dangers on nonsmokers.

16 MR. COFER: Same objection, Your Honor.
17 He may be able to testify about what his opinion as
18 to what the state of knowledge was but not the level
19 of understanding.

20 THE COURT: Everybody can have an
21 opinion. The question is, based upon some research
22 you've done or work in the field in order to make
23 that determination, that's what we're trying to get
24 at, so if you can explain the basis for it before
25 you give your opinion, I'd appreciate that.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE WITNESS: Thank you.

2 There have, in fact, been a variety of polls
3 done by the Robert Wood Johnson Foundation, the
4 American Cancer Society and others, looking at
5 individual states where the polls were done of the
6 opinions of the public about the effects of
7 secondhand smoke, about tobacco use generally, about
8 tobacco policies that relate in one way or another
9 to what I do at the AMA. And some of these polls
10 have, over the years, looked at what people think
11 about the effects of secondhand smoke.

12 I don't recall a question on any of those
13 polls that relates specifically to what smokers
14 think about the ability of tobacco, secondhand
15 smoke, to cause disease, among others.

16 But, in general, it would seem that early in
17 the decade of the '90s, people began to have an
18 increasing realization that environmental tobacco
19 smoke was, in fact, a health risk.

20 BY MR. ROSENBLATT:

21 Q. Dr. Houston, how old an organization is the
22 American Medical Association?

23 A. 150 years.

24 Q. Now, we've been referring, from time to
25 time, to various medical publications, and, of

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 course, the publication of the AMA is the Journal of
2 the American Medical Association. How long has that
3 been around?

4 A. It's been over 100 years. I don't know the
5 exact time of the first issue.

6 Q. And how often is that, a monthly --

7 A. Weekly.

8 Q. It's a weekly.

9 And who does it go to, the membership?

10 A. It goes to the membership of the AMA and to
11 subscribers, generally. It's one of the most widely
12 distributed medical journals in the world.

13 Q. Now, obviously you've told us that you're
14 the director of the Department of Preventive
15 Medicine and Environmental Health at the AMA.

16 Could you give us an idea as to some of the
17 other -- now, you are a full-time employee of the
18 American Medical Association?

19 A. Yes.

20 Q. I mean, at the present time you're not
21 treating patients?

22 A. That's correct.

23 Q. This is your full-time job, and you're on a
24 salary?

25 A. Yes.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. Give us an idea as to some of the other
2 departments or divisions within the American Medical
3 Association where there would be at the head of it a
4 doctor working full time, such as yourself?

5 A. Well, I work in a division called the
6 Division of Health Science, and in that division,
7 there are several departments that have doctors as
8 the head of those divisions. There's a Division of
9 Mental Health. There's a Division of Adolescent
10 Health. There are two divisions that are headed by
11 Ph.D's; one on HIV and AIDS and one on women and
12 minority health. And then there's my department on
13 Preventive Medicine and Environmental Health. Those
14 are the departments within the division.

15 In another division, the Division of Drugs
16 and Technology, there are several physicians that
17 head specific departments dealing with pharmacology
18 and -- that relate to medications and to medical
19 devices, to technology issues, to computers in
20 medicine and other things such as this. So there
21 are several departments in that particular division
22 that are also headed by physicians.

23 Q. In terms of overall staff, can you give us a
24 rough estimate as to how many full-time MDs are
25 working exclusively for the AMA?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. Well, there are about 900 employees of the
2 AMA altogether.

3 Q. You're based in Chicago?

4 A. In Chicago. And I expect that there are
5 about 35 or 40 MDs on the staff in one capacity or
6 another. In my department, there is another MD
7 besides myself in the capacity of what we call our
8 senior scientist.

9 She is board-certified in occupational
10 medicine and internal medicine and has a master's
11 degree in public health. There are four other
12 individuals in my department with master's degrees
13 in either public health or education. And in
14 others -- other departments across the division,
15 there are people with a variety of degrees,
16 including MD and MPH degrees.

17 Q. Now, Dr. Ronald Davis has testified in this
18 case previous to you. And what is his position
19 within the AMA? I know he's not a full-time
20 employee of the AMA, but he has a role.

21 A. He, in fact, is the chairman of what we call
22 our Council on Scientific Affairs. The council is
23 one of several councils within the AMA. There's a
24 Council on Ethical and Judicial Affairs and a
25 Council on Legislation and so on.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 The Council on Scientific Affairs is the
2 scientific and medical council that looks in a
3 deliberative way at science issues and health issues
4 within the AMA. It helps the AMA understand the
5 policy issues that are involved, the public health
6 and scientific issues that are involved in what it
7 is the AMA does, and issues a variety of reports,
8 comments on a variety of issues related to science
9 and health, and Dr. Davis is the current chair of
10 that group. It's elected by the house of delegates,
11 the council is, from among its membership.

12 The house of delegates is the policy-making
13 body of the AMA that's elected from county and state
14 medical societies, and they come to Chicago twice a
15 year to annual meetings of the AMA.

16 Q. How are policies formulated of the AMA in
17 general and, let's say, specifically with respect to
18 your department? What is that process before there
19 is an official policy of the AMA on a given subject?

20 A. Policies are introduced to the AMA house of
21 delegates, which is sort of like the house of
22 representatives in the way it works, either by
23 individual delegates or by the state medical
24 societies or the specialty societies. Like the
25 American Academy of Surgeons is a specialty society.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 They would, internally at the state level or
2 society level, decide that a particular issue was
3 worthy of the AMA to consider as a policy statement;
4 would introduce it as a policy resolution; attach
5 supporting documentation when appropriate.

6 The policy goes to what we call a reference
7 committee, which is almost like a congressional
8 hearing committee which discusses each one of the
9 proposed resolutions. That discussion is on both
10 sides if there are -- if there's disagreement about
11 the issue.

12 Sometimes AMA staff are asked to comment one
13 way or another on existing AMA policies that relates
14 to the issue at hand. Then the AMA House of
15 Delegates decides whether that particular policy
16 should be adopted by the AMA or not.

17 Oftentimes that policy then will result in
18 an action by the AMA, such as a report or a letter
19 to a congressman or a press conference related to a
20 particular issue. It might relate in us applying
21 for a grant on a particular issue or going in
22 partnership with the Lung Association or the
23 National Cancer Institute on an educational project.

24 So those are the sorts of things that happen
25 after a policy statement is adopted.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. Have you been a reviewer for the
2 Environmental Protection Agency reports?

3 A. I was a reviewer for the -- the AMA was
4 asked to be a reviewer for its report on
5 environmental tobacco smoke, yes.

6 Q. And what did you do in that capacity?

7 A. People in my department looked at the EPA
8 report, the draft report, when it was issued. We
9 sent it out for external review to some
10 statisticians outside the AMA, as well, and on that
11 basis prepared comments that we gave at hearings
12 that the EPA had, and we gave oral and written
13 testimony at those hearings.

14 Q. Did the American Medical Association take an
15 official position with respect to the final draft,
16 the ultimate conclusions reached by the
17 Environmental Protection Agency?

18 A. Yes. We supported them.

19 Q. Have you served on -- I don't know if I'm
20 using exactly the right terminology -- have you
21 served on the review panel of the American Cancer
22 Society?

23 A. I've served on grant review panels for the
24 Illinois Division of the American Cancer Society,
25 yes, not from the National Cancer Society.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. Okay. And have you served in a similar
2 capacity where you were reviewing -- had occasion to
3 review other grant applications?

4 A. Yes. I've been a grant reviewer for the
5 Robert Wood Johnson Foundation and for the National
6 Cancer Institute and a couple of other groups that
7 give grants on health-related issues.

8 Q. Tell us about how that process works, where,
9 as I understand it, a researcher at a university
10 somewhere else submits an application where he's
11 asking for money to go ahead and do some research.

12 A. Right. And depending on the size of the
13 organization that is giving the grant, a team of
14 experts would be assembled to look at the grant
15 applications, often as a result of something being
16 put in the Federal register or an announcement being
17 made of some sort saying, we have \$10,000,000 to
18 give away in this particular subject area, and the
19 subject area is defined so that people understand
20 the rules by which the grants are going to be
21 awarded, the subjects that the grants are going to
22 be thought appropriate for this particular pool of
23 money.

24 The grants come in. They are evaluated by
25 the internal staff of the organization. Sometimes

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 they are then sent out to the expert review team,
2 and those reviewers read the grants based on
3 criteria that are drafted by the organization that's
4 giving out the money.

5 Each organization has slightly different
6 criteria by which they think grants are appropriate
7 or not. Then, based on those criteria, the
8 reviewers come together and decide, essentially
9 scoring the grants, which ones would be worthy of
10 giving the money to or not.

11 Those grants are then rank-ordered, usually
12 starting from the best at the top and going down to
13 the ones that are thought to be less meritorious,
14 and you start awarding the grants. And when the
15 money runs out, that's where the grants are cut off.

16 Q. I assume there's nearly always more
17 applications than there is money available to fund
18 the grants?

19 A. Almost always.

20 Q. Okay. Now, is there an accepted and
21 standard process for grant programs, whether it be
22 the Robert Wood Johnson Foundation, the National
23 Cancer Institute or others you've been connected
24 with?

25 A. Each institution has its own rules about how
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 grants are awarded, but, in general, there is a
2 process by which both internal staff that have
3 expertise in the area and external reviewers who are
4 familiar with the area that's in question come
5 together and make the decisions about the grants.

6 So the scientists and the staff of the
7 organizations that are relevant to the disciplines
8 being -- where the money is given out, that's who
9 does the decision-making about where the grants go.

10 Q. Okay. In terms of this decision-making and
11 in terms of any grant review process with which you
12 have been involved, do lawyers have any input in
13 deciding on categories of research or in deciding on
14 who gets grants and who doesn't get grants?

15 A. It's never been my experience that that is
16 the case.

17 Q. Are you familiar with the grant program of
18 the Council for Tobacco Research in your capacity
19 with the American Medical Association?

20 A. I've had occasion to read about that, yes.

21 Q. And does the Council for Tobacco Research
22 program comport with the accepted and standard
23 process of grant applications that you've described?

24 MR. MOODHE: Objection, Your Honor.

25 Can we come to the sidebar, please?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE COURT: Okay.

2 (Counsel and the court reporter approached
3 the bench, and the following discussion was held
4 outside the hearing of the jury:)

5 MR. MOODHE: Your Honor, at his
6 deposition, this witness testified that he had no
7 familiarity with the grants programs, that the only
8 thing he's ever done is flip through a couple of
9 annual reports. He said he didn't know anything
10 about the staff; he didn't know anything about the
11 Scientific Advisory Board; he didn't know the
12 grantees; he didn't know any of the members; he
13 didn't know the process.

14 Now, I don't know what he's saying. He now
15 suddenly has knowledge based upon, what it sounds to
16 me like -- it may or may not be the only source --
17 these documents that we have at issue now. None of
18 them address any of the facts going into how the CTR
19 makes its awards of funds to researchers.

20 So given his testimony and his complete
21 stated lack of factual foundation, I can see no
22 basis for this witness now to offer the opinion or
23 to ascribe facts that he had no personal knowledge
24 of at the time of his deposition.

25 THE COURT: Which was when?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. MOODHE: Which was?

2 MR. RUSS: June the 9th.

3 THE COURT: This year?

4 MR. RUSS: Yes.

5 MS. ROSENBLATT: There are some 50 or
6 more pages in the deposition about the Council for
7 Tobacco Research. Throughout the deposition, he
8 definitely said he had a familiarity with it. It's
9 a topic of conversation among colleagues. It's
10 something he's involved with in the AMA.

11 And if Your Honor wants to review it, we'll
12 go through it. It will take awhile.

13 I mean, he has a familiarity with how its
14 run and the kinds -- in fact, he has himself and his
15 department, they are having hearings on whether any
16 journals in this country should accept anything from
17 the Council for Tobacco Research. He is very
18 familiar with that topic.

19 THE COURT: Let me ask you a question.
20 The thrust of your question was what? How the
21 AMA --

22 MR. ROSENBLATT: Does the --

23 MS. ROSENBLATT: Is he familiar with
24 the grant program at CTR? He said, yes, he was.

25 MR. ROSENBLATT: I had him explain the
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 normal process.
2 THE COURT: Of the AMA?
3 MR. ROSENBLATT: Of Robert Wood
4 Johnson.
5 MS. ROSENBLATT: Grant programs.
6 MR. ROSENBLATT: Grant programs, not
7 only the AMA.
8 He's been on review boards. He's been
9 involved where they decide to give it to this side
10 or give it to that.
11 THE COURT: Yes. I understand.
12 MR. ROSENBLATT: Now, I'm saying, does
13 the Council for Tobacco Research, does their grant
14 application process conform --
15 THE COURT: Okay.
16 MR. ROSENBLATT: -- with reasonable --
17 MS. ROSENBLATT: First he said he had
18 familiarity.
19 THE COURT: That's their point. How
20 would he know that?
21 MS. ROSENBLATT: I asked him, are you
22 familiar with the program?
23 THE COURT: We're going to find out.
24 MR. ROSS: He said he read something
25 about it.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. WHITING: He answered the question.
2 He said, "I read something about that."

3 THE COURT: He may have read something
4 from CTR for all I know. I don't know. Let's find
5 out. If he doesn't have familiarity with it from
6 the direct sources, I would agree with it.

7 MR. MOODHE: I would request to voir
8 dire the witness on this issue.

9 THE COURT: Okay. Do you want to do it
10 in or outside the presence?

11 MR. MOODHE: I can do it outside the
12 presence of the jury, or whether you do it at
13 sidebar. Whether you excuse the jury --

14 THE COURT: It's hard doing it at
15 sidebar.

16 (The following proceedings were held within
17 the hearing of the jury:)

18 THE COURT: Okay. Folks, I'm going to
19 have to ask you to go in the other room for a short
20 time.

21 (The jury exited the courtroom.)

22 THE COURT: I would ask you folks not
23 to have these little sessions. I mean, you're
24 perfectly entitled to them, but please be aware that
25 the jury, in and out, in and out, it has an effect

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 sending on the jury. You're certainly entitled to
2 do it. Keep it short.

3 Okay. Who wants to do it?

4 VOIR DIRE EXAMINATION

5 BY MR. MOODHE:

6 Q. Doctor, my name is Joe Moodhe. I represent
7 Council for Tobacco Research. A few questions about
8 your familiarity with the Council for Tobacco
9 Research.

10 Have you ever had any direct contact with
11 Council for Tobacco Research?

12 A. No.

13 Q. Have you ever applied for a grant from the
14 council?

15 A. I have not.

16 Q. Have you ever reviewed the grant application
17 process for the Council for Tobacco Research?

18 A. I have not.

19 Q. Have you ever spoken to any members of the
20 Scientific Advisory Board for the Council for
21 Tobacco Research?

22 A. No.

23 Q. Have you spoken to any grantees, to the best
24 of your knowledge, about the Council for Tobacco
25 Research?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. No.

2 Q. Have you ever systematically sat down and
3 reviewed the literature published by grantees who
4 have received funds from the Council for Tobacco
5 Research?

6 A. I have reviewed several of the annual
7 reports of the Council and the abstracts. I have
8 not gone out to seek out the literature that's been
9 published.

10 Q. So you've just read a couple of volumes of
11 the abstracts, but you have not read any of the
12 literature?

13 A. Not as far as I know. There may have been
14 published papers that I was unaware of.

15 Q. But you didn't sit down and systematically
16 review the literature?

17 A. I did not.

18 Q. Did any portion of that material that you
19 read deal with the process of how CTR awards funds
20 to its grantees?

21 A. Not other than as related in the annual
22 reports, no.

23 Q. And to your knowledge, is there any
24 description of that process in the annual report
25 that you recall?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. I don't recall.

2 Q. What is the basis of your knowledge about
3 the Council for Tobacco Research?

4 A. Published reports in the Wall Street Journal
5 and elsewhere, conversations with colleagues at
6 conferences, that sort of thing.

7 Q. And published reports in the Wall Street
8 Journal, are you talking about a journalistic
9 account of something?

10 A. Yes.

11 Q. Have you ever read or reviewed any primary
12 documents? Do you know what I mean by "primary
13 document"?

14 A. Yes.

15 Q. Have you ever read any primary documents
16 about the grant-making process of the council?

17 A. I've done that. We were -- earlier on it
18 was -- it was discussed that The Cigarette Papers
19 and related issues shouldn't be brought out by --

20 THE COURT: You can do it here, but not
21 in the presence of the jury. That would be one
22 thing.

23 A. In the context of reviewing materials
24 related to The Cigarette Papers and the JAMA
25 articles related to those, I saw some copies of

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 primary documents, yes.

2 BY MR. MOODHE:

3 Q. Did any of them deal with the Council for
4 Tobacco Research grant-making process?

5 A. They dealt with the Council for Tobacco
6 Research special projects grants and how those were
7 put together and the process by which attorneys and
8 other nonscientific folks had input into the
9 grant-making process, both from the point of view of
10 the categories of grants that were designated under
11 special projects and then how they were reviewed.

12 Q. Did you read the actual documents
13 themselves, or did you read the account of those
14 documents or excerpts of those documents as
15 described in The Cigarette Papers?

16 A. I read the documents themselves.

17 Q. Which documents do you recall reading?

18 A. A variety of memos from officials within the
19 CTR at that time and the TIRC, and attorneys within
20 the industry dealing with how this was set up.

21 Q. Did any of those documents describe the
22 overall grant program?

23 A. No.

24 Q. You have -- I'm sorry.

25 A. They didn't describe the overall program,
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 except to say that the Scientific Advisory Board was
2 set up in order to present an appearance of
3 propriety, if you will, and to give grants that
4 would have the appearance of performing the function
5 of the CTR; that is, investigating the legitimate
6 research. And I have no doubt that the members of
7 the Scientific Advisory Board knew just that.

8 Q. Do you understand there to be a difference
9 between the grant program of the CTR and special
10 project program related to CTR?

11 A. Yes. I believe that there probably is a
12 great distinction between the two, and that I have
13 no -- I have no reason to doubt the integrity of the
14 members of the Scientific Advisory Board.

15 Q. You understand what you've just been talking
16 about has nothing to do with the grant program;
17 you're talking about special projects; right?

18 A. And special projects, as far as I can
19 understand, were a great deal about what the CTR was
20 about. The grant programs of the CTR, the ones that
21 the public saw and the ones that are included in
22 your annual reports, are a different kettle of fish
23 than the other sets of contracts and special
24 projects.

25 Q. But you don't know how the process works for
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 awarding those grants; do you?

2 A. No, I don't.

3 Q. And you don't really know how the process
4 for awarding special projects works either; do you?

5 A. Inasmuch as I have been trying to piece it
6 together over the years in trying to understand the
7 CTR and how the special projects work, I know -- I
8 know bits and pieces of it. I don't suppose I know
9 all the ins and outs, not having been a member of
10 those councils.

11 MR. MOODHE: Your Honor, based on this
12 testimony, I would move to exclude this witness from
13 testifying at all about either the CTR grant program
14 or about special projects, given the fact that he
15 has no knowledge on which to base those opinions.
16 He describes his own view as being, at best, based
17 on bits and pieces of information, without a
18 comprehensive understanding of the facts.

19 The second problem we have is that it's
20 obviously based on materials that are not yet in
21 evidence and may never be in evidence in this case.
22 And, therefore, should this testimony come in at
23 this point, we will have incurable error that we
24 can't possible purge from this jury that would be
25 highly prejudicial to the defendants.

 COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

 COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. WHITING: Your Honor, if I just
2 may --

3 THE COURT: You mentioned a key point
4 at this point.

5 MR. MOODHE: Your Honor, if all the
6 evidence were to come in, I suppose that in theory
7 the opinion would be admissible, but there's no
8 basis now for believing what, if any, evidence is
9 going to come in on any of these matters, and that
10 is the problem. It's not a problem we have created.
11 It is the problem of putting on an expert before the
12 facts are in evidence.

13 THE COURT: Counsel.

14 MR. WHITING: Your Honor, I want to add
15 to what Mr. Moodhe said, without repeating. What we
16 have here is a classic example of using an expert
17 witness as a conduit for hearsay.

18 What the witness testified is that much of
19 the source of his information about CTR is from
20 sources such as the Wall Street Journal,
21 conversations with colleagues. Again, it goes to
22 the very point Mr. Moodhe has said, the facts are
23 not in evidence. He cannot testify, and it should
24 not an conduit for hearsay.

25 THE COURT: As I said before, some
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 matters that experts testify about are hearsay and
2 inadmissible, but, nonetheless, an expert can
3 testify about them.

4 MR. RUSS: Yell, Your Honor --

5 THE COURT: There is a distinction.

6 MR. WHITING: If I may, I think the
7 distinction is an expert can rely upon hearsay. He
8 is not permitted to be a conduit for the hearsay --

9 THE COURT: I understand.

10 MR. WHITING: -- before the jury.

11 THE COURT: I'm just pointing out the
12 distinction. Okay. So we all understand.
13 Sometimes that line gets blurred.

14 MR. RUSS: Judge. Okay. May I add one
15 point on that?

16 I think based on having read this witness'
17 deposition testimony, that the exclusive source of
18 the information he has about CTR's special projects
19 is The Cigarette Papers or documents that he
20 obtained and reviewed in connection with The
21 Cigarette Papers. And those documents were stolen
22 from us. And to permit this witness to testify
23 based upon them would violate the privileges that we
24 maintain and also violate Your Honor's earlier
25 ruling.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 These lawyer memoranda are part of the
2 privileged materials that are excluded in this case,
3 and they could never come into the case.

4 MR. ROSENBLATT: I think I can
5 short-circuit this, because part of where I'm going,
6 the AMA, as an organization, has dealt with and
7 studied the Council for Tobacco Research. And
8 Dr. Houston has read a lengthy letter from the CEO
9 of the Council for Tobacco Research, trying to
10 justify that they're this wonderful organization,
11 and so he's had both sides of the story.

12 The AMA has studied it. He's a full-time
13 employee of the AMA. Dr. Glenn wrote a letter to
14 the AMA, the CEO of the Council for Tobacco
15 Research, saying, everything we do is legitimate,
16 everything we do is on the up-and-up. Discussing
17 the grant programs. Now, also simply by looking at
18 someone with Dr. Houston's expertise, and this is
19 one of the questions I would ask him, he certainly
20 knows the focus of their research.

21 Where am I going with this? To show, going
22 back to the 1954 Frank Statement, telling the
23 American public, we're going to get to the bottom of
24 the question, Does cigarette smoking cause health
25 effects, and the focus of their research has had

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 nothing to do with that. They don't want the answer
2 to that question. They want to tell the American
3 public, We need to do more research, and 20 years
4 from now, you know, they still want to be debating
5 this while 3,000 youngsters start smoking every day.

6 So that's where I'm going. And they've
7 known that for years.

8 MR. MOODHE: Your Honor, the issue on
9 the table at this moment is whether this witness is
10 in a position, as an expert, to offer an opinion
11 about whether CTR's grant program and the processes
12 which awards monies conforms or doesn't conform as
13 to how other programs award money. That's the
14 factual evidence.

15 THE COURT: That's what the objection
16 was raised to.

17 MR. MOODHE: And that's what this
18 witness --

19 THE COURT: How do you answer a
20 question like that, if the question is posed to you?

21 THE WITNESS: The question is whether
22 the CTR Scientific Advisory Board operates the same
23 way as other scientific advisory boards and whether
24 they give out grants the same way.

25 THE COURT: The objection is you don't
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 have the information enough to be able to assess it.
2 THE WITNESS: And I probably don't from
3 the point of view of how their Science Advisory
4 Board works.

5 THE COURT: Okay.

6 THE WITNESS: Because I've not seen
7 that process from the point of view of their special
8 projects and how they work. I think I have a pretty
9 good idea of how that works.

10 THE COURT: Okay. I'll sustain the
11 objection as it relates to the CTR grant fund
12 program, because I really don't feel he has
13 sufficient information and background material to
14 determine how they work and what they do in granting
15 or determining grants and what to assess it to and
16 whatever else.

17 Now, we get into this other area of special
18 projects, and I assume you're going into that in the
19 same way?

20 MR. ROSENBLATT: Yes.

21 THE COURT: Okay. You made reference
22 to this letter.

23 MR. ROSENBLATT: Yes.

24 THE COURT: That's a special projects
25 type letter, or is that a grant letter?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. ROSENBLATT: It's a -- well, you
2 know, I don't want to --
3 MR. MOODHE: Your Honor, it's one of
4 the exhibits that is on your desk, I believe.
5 THE COURT: All right. Which one? You
6 make a reference to it.
7 MR. ROSENBLATT: It's a letter signed
8 by Dr. Glenn.
9 MS. ROSENBLATT: No. 463, plaintiffs'
10 exhibit.
11 MR. ROSENBLATT: The CEO.
12 MS. ROSENBLATT: It has Council for
13 Tobacco Research U.S. on it.
14 THE COURT: I have the numbers. I'll
15 just look for the numbers.
16 Okay. It's a letter to James Todd, MD.
17 MR. ROSENBLATT: Yes, who is the
18 executive vice president of the AMA.
19 THE COURT: Okay.
20 THE WITNESS: He was at the time.
21 MR. ROSENBLATT: At the time.
22 THE COURT: By James Glenn. All right.
23 And this is the letter you make the
24 reference to?
25 MR. ROSENBLATT: Yes, Judge. Dated
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 February 15, '95.

2 THE COURT: Right.

3 MR. ROSENBLATT: Yes. That's the
4 letter.

5 THE COURT: Okay. Apparently what he
6 does is defend the CTR against what he perceives to
7 be accusations from elsewhere. The funding,
8 research, it says none of that is correct.

9 MS. ROSENBLATT: What we're planning to
10 do in terms of the time situation, Your Honor, just
11 so that we don't spend a lot of time on the
12 exhibits, we're putting these exhibits in, but I
13 guess like we've done with other witnesses, we're
14 going to do it on an exhibit afternoon day where
15 we're just going to deal with exhibits.

16 If we're trying -- we're going to have
17 objections on some of these other exhibits. There's
18 no way this witness will be completed, so Stanley is
19 just going to ask him questions generally, without
20 placing the exhibits into evidence --

21 MR. ROSENBLATT: Through him.

22 MS. ROSENBLATT: -- through him, at
23 this point, just because of the time constraints
24 right now.

25 So this was just to show his familiarity,
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 and there are a multiple of documents that he had
2 previously reviewed, none of which are privileged,
3 that are part of this group.

4 In terms of laying the foundation for his
5 familiarity with CTR, there will be some general
6 questions about CTR. You've sustained the objection
7 as to the grant program, but, you know, we just want
8 to proceed with the general CTR questions, his
9 familiarity with the AMA --

10 THE COURT: All right.

11 MS. ROSENBLATT: -- and so forth. And
12 at this point, you know, we'll just defer on placing
13 these in evidence.

14 MR. COFER: Your Honor, may I clarify
15 one thing?

16 If you're not going to place them into
17 evidence, you don't read from them or have the
18 witness read from them in front of the jury, because
19 they're hearsay.

20 MS. ROSENBLATT: We're not going to
21 read from them.

22 THE COURT: Okay.

23 MR. COFER: Or -- I'm sorry.

24 MR. MOODHE: With respect to the letter
25 you just reviewed, I think if you read through it,

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 you would see that there is no discussion of special
2 projects or the processes by which special projects
3 were funded or determined how they were going to be
4 done, so that cannot be a basis for this witness'
5 opinion in this case.

6 The witness stated that while he had read a
7 couple documents, he characterized it in his own
8 words as bits and pieces of information. That is
9 not the way an opinion by an expert is formulated.
10 It is not based on bits and pieces of things he may
11 have read or picked up.

12 A systematic review is what's required for
13 any expert to render an admissible opinion in this
14 case. And this witness has not done that.

15 Moreover, as best we can determine based on
16 this witness' deposition testimony, his knowledge
17 about special projects emanated from The Cigarette
18 Papers, which we've already discussed. It's not an
19 appropriate --

20 THE COURT: Is that the main source of
21 your information, The Cigarette Papers?

22 THE WITNESS: That's a good bit of it,
23 Your Honor, as well as reviews of -- excuse me --
24 material that has been disclosed in other litigation
25 in discussions with colleagues, reports by the Wall

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Street Journal and elsewhere. It has been -- I
2 would characterize it more as systematic than bits
3 and pieces, but you put the bits and pieces together
4 to make an opinion.

5 THE COURT: That's a problem with The
6 Cigarette Papers information, number one, any of the
7 documents from Brown & Williamson, which they
8 classify as privileged and stolen.

9 Other litigation documents, I don't have any
10 knowledge of, so I'm not really sure. The
11 conversations with colleagues presents a problem
12 also.

13 MS. ROSENBLATT: I think experts rely
14 on conversations, conferences.

15 We can go through exhibits. The exhibits
16 he's familiar with prior to The Cigarette Papers are
17 not privileged, and they are documents that discuss
18 the CTR.

19 The AMA -- at the present time there has
20 been an ongoing study and there have been
21 communications with the American Thoracic Society in
22 terms of the positions of journals through this
23 country of CTR.

24 THE COURT: The thrust of what you're
25 saying here is that they set up a facade and they

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 really didn't do what they said they were going to
2 do. They didn't really intend to do what they said
3 they were going to do. That's the thrust of your
4 argument.

5 MS. ROSENBLATT: Correct.

6 THE COURT: I don't know how it's going
7 to be able to come out from this witness.

8 MS. ROSENBLATT: Because he studied it.
9 He studied it. He has expertise.

10 THE COURT: I'm not sure. That's where
11 I'm having a problem.

12 MS. ROSENBLATT: The AMA has, the
13 witness has explained, and I guess --

14 THE COURT: That's what I want him to
15 do. I want him to explain how he can make those
16 statements and yet fall within the confines of the
17 admissibility of the rules.

18 MS. ROSENBLATT: Okay. The ongoing --

19 THE COURT: You have to have some sort
20 of direct knowledge by either your own investigation
21 or investigation that you oversaw or that you're
22 familiar with, along the lines of some credible
23 research. That's what I need to know.

24 THE WITNESS: It's hard for me to
25 detail precisely which reports I saw and at which

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 point in time, but it corroborates and goes along
2 with what was released through the Brown and
3 Williamson papers about the CTR and special
4 projects.

5 I've been looking into this for a number of
6 years, and it goes back into the early '90s, I
7 suppose, when I began to understand through, again,
8 conversations with colleagues, looking at documents
9 that had come from other litigation, attendance at a
10 variety of meetings in which this was discussed
11 generally.

12 The material that was put in the public
13 domain by The Cigarette Papers and their release
14 certainly cemented a lot of that and made it much
15 more clear.

16 MS. ROSENBLATT: Now, there is ongoing
17 research that's -- and discussions and meetings at
18 the American Medical Association regarding this, so
19 maybe you could explain that to the Judge on CTR.

20 MR. ROSENBLATT: Yes. In other words,
21 the official position taken by the AMA with respect
22 to the Council for Tobacco Research about the deans
23 of the medical schools.

24 THE WITNESS: Oh.

25 MR. MOODHE: Excuse me, Your Honor. I
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 don't mean to nitpick, but my understanding of the
2 rule is that counsel against whom or the party
3 against whom the evidence is being offered is
4 entitled to voir dire, and that once a prima facie
5 showing had been made that the witness does not have
6 the basis for offering the opinion, that opinion is
7 inadmissible. The party proposing to offer the
8 opinion testimony then has to put in the underlying
9 facts or evidence before the opinion.

10 THE COURT: That's what he's trying to
11 do.

12 MS. ROSENBLATT: And we had one
13 question that was up as to the grant program. We've
14 gone beyond that.

15 THE COURT: I'm trying to avoid another
16 session.

17 MS. ROSENBLATT: Yes.

18 THE COURT: So we're getting into this
19 special project session. So why don't you explain
20 what it is that you know about this system and the
21 program that you're talking about.

22 THE WITNESS: The policy statement to
23 which counsel refers came up a bit over a year ago
24 at the AMA, in which the American Thoracic Society
25 and others introduced a policy resolution of --

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 stating that the AMA should adopt a policy
2 encouraging medical schools, cancer research
3 institutions and other groups like that not to
4 receive funds and engage in cooperative research
5 with the Council for Tobacco Research and other
6 analogous groups.

7 That was based on information supplied to us
8 in testimony at the reference committee by the
9 Thoracic Society and other individuals who were
10 delegates to the house, that related, among other
11 things, to the way the special projects were handled
12 and the general lack of fulfilling of the promise of
13 the CTR, if you will, as was alluded to previously
14 by counsel.

15 In addition, ethical considerations of where
16 that money came from ultimately, that is, from the
17 purchase of cigarettes and the ultimate disease and
18 death that results from that, given that CTR is
19 funded by the industry, was felt to be an ethical
20 dilemma for institutions and hospitals, and the AMA
21 subsequently adopted the policy.

22 A letter then went out to medical school
23 deans advising them of this AMA policy, that we felt
24 it was inappropriate for hospitals, medical schools
25 and research institutions to receive money from the

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 tobacco industry or its research institutions.

2 MR. MOODHE: I think it's quite clear
3 from the witness' answer that the information
4 doesn't provide a factual basis for allowing him to
5 offer an opinion here. In the course of that, all
6 he said was there were some people who came in and
7 offered some information. He's not -- this witness
8 did not go out and do any research, do any hands-on
9 analysis of special projects or, for that matter,
10 any other aspect of the CTR.

11 And the case law is quite clear, this
12 literature -- this witness hasn't even approached
13 having done a systematic review of evidence or
14 literature. And that's what the Florida Supreme
15 Court in the Forman case said in April wouldn't even
16 be enough to qualify a witness to offer an opinion.

17 All this witness can offer is bits and
18 pieces of information he picked up along the way
19 from a document here, from The Cigarette Papers,
20 from some conversations with people in the medical
21 profession.

22 THE COURT: Let me make a distinction
23 here that maybe we haven't made yet that may relate
24 to him offering an opinion. Well, what he's just
25 related to was the policy of the AMA.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE WITNESS: That's correct.

2 THE COURT: It was entirely based on
3 an opinion.

4 MR. MOODHE: If he wants to testify
5 about the fact that the AMA has a policy --

6 THE COURT: And the reason for it.

7 MR. MOODHE: -- that's a different
8 issue.

9 THE COURT: Yes.

10 MR. MOODHE: That has a separate set of
11 problems. But it is not expert testimony. Right
12 now, I'm concerned with, is he going to be permitted
13 to offer an opinion about special projects or about
14 the grant program.

15 THE COURT: Okay.

16 MR. MOODHE: That's where the factual
17 basis -- that's where the expertise is fundamentally
18 insufficient.

19 THE WITNESS: The AMA made its opinion
20 about whether to adopt that resolution or not based
21 on information supplied to its reference committee a
22 couple of years ago by persons from the American
23 Thoracic Society and elsewhere, who presented their
24 opinions to the AMA and the policy was passed.

25 THE COURT: That's a different area.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 What we're talking about is your personal opinion.

2 THE WITNESS: I understand.

3 THE COURT: As to whether it is or not
4 functioning as they said it would function or not
5 functioning as they said it would function. And
6 that has to be based upon something a lot more than
7 that.

8 I'll sustain the objection as it relates to
9 and that, and we'll get into other areas.

10 Let's bring the jury in.

11 MR. WHITING: Your Honor, if I can
12 avoid this, if counsel intends to ask him about this
13 AMA policy, I would like to simply state an
14 objection on the record on hearsay and relevance and
15 prejudicial grounds, so we don't have to interrupt
16 and have a sidebar at that point, if he intends to
17 ask.

18 I think it is irrelevant, highly
19 prejudicial. The probative value would outweigh --
20 would be outweighed by the prejudice and double and
21 triple hearsay based on what he says is the basis
22 for it.

23 THE COURT: Overrule the objection.

24 All right. Bring the jury in.

25 (The jury entered the courtroom.)

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. (By Mr. Rosenblatt) Dr. Houston, has the
2 American Medical Association adopted a formal policy
3 of -- a formal institutional policy, with respect to
4 the Council for Tobacco Research and, if so, tell us
5 what that policy is.

6 A. The AMA has adopted a policy which states
7 that research institutions, hospitals, medical
8 schools and so forth, should not engage in grant
9 activities that are funded by the Council for
10 Tobacco Research, by The Tobacco Institute, or the
11 Center For Indoor Air Research and other groups,
12 including direct funding from the tobacco industry.

13 I recognize that The Tobacco Institute
14 itself doesn't give out grants, and I misspoke when
15 I said that, but from the industry and its analogous
16 research groups, the AMA has in fact an official
17 position that says that hospitals and medical
18 institutions should not deal with them.

19 Q. And what's the reason for that policy?

20 A. There were several reasons, one being that
21 the institutions that we have listed seem to have
22 policies that don't conform to, in some cases,
23 legitimate scientific research principles that we
24 talked about earlier and how scientific research is
25 handled and how money is distributed.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. MOODHE: Objection, Your Honor.

2 THE COURT: Overruled.

3 A. We also formulated that policy based on the
4 full -- the failed promise of the Center for Tobacco
5 Research and other groups, in their failure to live
6 up to their promise of really finding out the
7 answers to the questions that relate to tobacco and
8 illness; that is, that these institutions purported
9 themselves to be interested in finding out those
10 answers of whether smoking causes illnesses, and it
11 seemed to the AMA that that was not going on and
12 that it was not appropriate for the scientific
13 community to continue to participate in questions
14 that were not really being answered in that fashion.

15 And finally, the reason for the policy was
16 that we didn't feel it was ethically proper for
17 physicians and hospitals to take money that
18 ultimately came from the sale of tobacco products
19 and, thereby, the suffering and death of our
20 patients.

21 Q. Dr. Houston, as a -- in terms of the process
22 itself, how did the American Medical Association, as
23 an official organization, make known this policy to
24 medical schools and to hospitals and other
25 institutions?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. It was covered in the -- in the proceedings
2 of the House of Delegates and that got picked up a
3 little bit in the press, but we also sent out a
4 letter to medical schools and to research
5 institutions advising them of this policy and of the
6 reasons for it.

7 In addition, we adopted a subsequent policy
8 stating that in our opinion scientific and medical
9 journals should not accept research papers that were
10 funded by the tobacco industry or its analogous
11 research institutions.

12 Q. You had mentioned earlier the Center For
13 Indoor Air research. What is that?

14 A. That's another tobacco industry research
15 group that is funded by the industry that does
16 purport to do research on indoor air quality issues.

17 Q. And was that covered within the letter that
18 was written to the deans of medical schools and the
19 hospitals?

20 A. Yes. There was a list of organizations that
21 were covered under that policy that went out in that
22 letter.

23 Q. Have you made a study of the relative
24 exposure -- I don't mean from the standpoint of a
25 chemist or from the standpoint of a purely technical

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 assessment of the atmosphere, but have you made a
2 study and analysis of the exposure to secondhand
3 smoke that flight attendants are subjected to
4 compared with workers in other fields?

5 A. Yes, I have looked into that.

6 Q. And what have been your conclusions as to
7 the level of exposure of flight attendants compared
8 with other workers?

9 A. My review was of a study that was done in
10 airplanes, by James Repace and others, in using
11 exposure meters to determine the level of various
12 chemicals in the air in airline cabins, in different
13 sections of the airplane while they were in flight,
14 and comparing that to several studies in other
15 workplaces and in the home and other places where
16 secondhand smoke is common.

17 MR. COFER: Excuse me, Your Honor. May
18 I approach?

19 THE COURT: Yes, sir.

20 (The attorneys and the court reporter
21 approached the bench, and the following proceedings
22 were had outside the hearing of the jury.)

23 MR. COFER: Your Honor, the objection
24 is simple. This is duplicative. We had two experts
25 yesterday that actually participated in the studies,

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 went on, talked about the measurements. We have had
2 other experts talk about the measurements. This
3 person is trying to rely on one study.

4 On the one hand we are talking about
5 interest of time and him trying to catch a flight
6 and me cutting down my cross examination. I just
7 don't think we should be able to let him now give
8 hearsay on one study when we had eight hours of
9 testimony on it yesterday.

10 THE COURT: He hasn't said anything
11 about the hearsay, but he said that one study. He
12 mentioned the name of it. Then he said several
13 other studies. He's talking about several other
14 things. He may have more information than the other
15 ones did. I'm not sure.

16 MR. COFER: It's cumulative, Your
17 Honor.

18 THE COURT: He can express an opinion.

19 MR. WHITING: For the record, I would
20 object. This is outside the confines of this
21 expert. He cannot become an expert by going out and
22 reading a bunch of studies. There is no indication
23 of any credential that he has any competence to
24 testify to exposure matters, and this is again just
25 introducing hearsay through an expert as a conduit.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 That's my objection.

2 MR. COFER: But the other point is the
3 fair cross examination is the Airliner Report, the
4 GEOMET Report, all the stuff we talked about
5 yesterday. If this guy is going to hang himself out
6 to offer an opinion, we are entitled to show it
7 doesn't have any basis and it flaws the opinion. If
8 he misses his seven o'clock flight, it ain't my
9 fault.

10 THE COURT: Overruled.

11 MR. ROSENBLATT: It is too.

12 (The following proceedings were had
13 within the hearing of the jury.)

14 Q. (By Mr. Rosenblatt) I am basically asking
15 you for your bottom line opinion as to the
16 comparison between the exposure to secondhand smoke
17 of flight attendants compared to other workers.

18 A. Yes. And my bottom line opinion is that
19 airline attendants would have been exposed to the
20 smoke in, compared to other workplaces -- for
21 example, in the smokiest bars and restaurants -- and
22 that the smoking sections in the airplanes would
23 have been, as far as I can tell, smokier, from the
24 point of view of the particles in the air, than 80
25 percent of the workplaces and home environments

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 where smoke is common.

2 Q. Now, I had asked you earlier about the AMA's
3 position and your position with respect to the final
4 draft report of the Environmental Protection Agency.

5 Now, what is -- what is the position of the
6 American Medical Association with respect to the
7 accuracy of the 1986 Surgeon General's Report and
8 the 1986 Report of the National Academy of Sciences
9 on the issue of secondhand smoke causing disease?

10 A. A systematic review of those particular
11 documents was not done by AMA staff at the time, as
12 far as I can tell. But taken as a whole, we think
13 that they strongly support the proposition that
14 environmental tobacco smoke causes lung cancer.

15 When you look at the weight of the evidence
16 in total, it's not just one agency that is saying
17 that environmental tobacco smoke causes lung cancer.
18 The Surgeon General, the National Academy of
19 Sciences, a large review in Britain that same year,
20 1986, came to the same conclusions independently.
21 Other reviews were done in the literature after
22 that, and then the EPA report weighed in in 1992,
23 '93.

24 Subsequent to that there have been other
25 reviews which have looked at it and have similarly

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 been confirmatory -- the California EPA just this
2 year.

3 Q. And, Dr. Houston, what is your opinion,
4 based upon reasonable medical probability, as to
5 whether secondhand smoke causes disease in healthy
6 nonsmokers?

7 A. My opinion, and also that of the American
8 Medical Association, is that environmental tobacco
9 smoke is a cause of lung cancer in healthy
10 nonsmokers, is a cause of disease of other sorts as
11 well.

12 The literature is not quite as firm on
13 environmental tobacco smoke as a cause of heart
14 disease, but it is highly, highly suggestive that
15 there is a link, a causal link between environmental
16 tobacco smoke exposure and heart disease, as well as
17 respiratory conditions such as asthma and a great
18 variety of illnesses in children, including asthma,
19 middle ear disease, pneumonia, bronchitis, and
20 Sudden Infant Death Syndrome.

21 Q. Dr. Houston, with respect to the issue of
22 banning smoking in certain indoor environments,
23 whether it be governmental offices, restaurants,
24 whatever, is that an issue that you have followed
25 both on the federal and state level?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. Yes, it is.

2 Q. What has been the consistent position of the
3 tobacco industry, and specifically Philip Morris,
4 R.J. Reynolds, Brown & Williamson and Lorillard,
5 with respect to banning smoking indoors?

6 MR. COFER: Objection, lack of
7 foundation.

8 THE COURT: Well, I guess you will have
9 to set a predicate.

10 Q. Is this an issue that you studied, that you
11 are knowledgeable about?

12 A. Yes, it is, and our state medical societies,
13 in partnership with other health groups across the
14 United States, have been following this very
15 closely, as well as the AMA at a national level.

16 Q. Is that something you have kept track of?

17 A. Yes, it is.

18 Q. So what has been the consistent position of
19 the tobacco companies with respect to any move to
20 ban smoking in indoor environments?

21 A. It has generally been---

22 MR. WHITING: Your Honor, excuse me.

23 THE COURT: Yes, I hear you.

24 MR. WHITING: May we approach?

25 THE COURT: I suppose so.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 (The attorneys and the court reporter
2 approached the bench, and the following proceedings
3 were had outside the hearing of the jury.)

4 MR. WHITING: Your Honor, this whole
5 line of questioning is directly into the lobbying
6 rulings you have already entered and to our position
7 with respect to our exercise of First Amendment
8 rights with respect to state legislators, local
9 ordinance -- I thought the Court said lobbying
10 activity was not to be a part of the case and ruled
11 it should not be part of the testimony. That's
12 exactly what he's talking about.

13 THE COURT: Not necessarily so.
14 There's lobbying and other things. Not everything
15 they do is lobbying, so I can't rely totally, every
16 time they open their mouth, it's a lobbying thing.

17 MR. MARTINEZ: When we argued it, we
18 argued specifically about the ability of the tobacco
19 companies to go to their representatives --

20 THE COURT: Yes, but we're not talking
21 about that.

22 MR. MARTINEZ: -- to oppose any
23 legislation that was -- what he's asking them now is
24 what was their position or if their position was to
25 oppose. If they want to ask if they approached him

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 or approached somebody else, but to -- just that
2 generally, clearly that's what they are mostly
3 talking about. He's trying to back door you.

4 THE COURT: The medical society and to
5 the general public -- that wouldn't be lobbying.
6 Okay. If he knows.

7 MR. MARTINEZ: If he knows, then---

8 THE COURT: He said he made the study
9 of it.

10 MR. MARTINEZ: As to the other, I
11 disagree, but I understand your ruling.

12 THE COURT: Get away from any lobbying
13 activity.

14 (The following proceedings were had
15 within the hearing of the jury.)

16 Q. (By Mr. Rosenblatt) Dr. Houston, I am not
17 asking you specifically about the nitty-gritty
18 activities that the tobacco companies would have
19 been involved in, but from a policy standpoint, what
20 has been their consistent position with respect to
21 public hearings relating to issues of banning
22 smoking in indoor environments, whether at the
23 federal, state or local level?

24 MR. WHITING: Same objection.

25 MR. MARTINEZ: Same objection. Talking

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 about public hearings.

2 THE COURT: I don't know. It's such a
3 broad area there. Why don't you rephrase the
4 question?

5 MR. ROSENBLATT: Okay.

6 Q. Leaving out the concept of federal, state,
7 local, but whenever the issue, whenever the issue of
8 banning smoking in an indoor environment came up,
9 based on your studying, based on your knowledge, has
10 the tobacco industry, the tobacco companies, taken a
11 consistent position?

12 MR. MARTINEZ: Your Honor, that's not
13 the question he said he was going to ask. That's
14 not the question you said he could ask.

15 THE COURT: No, but on the other hand,
16 there is no requirement he has to ask that question
17 again.

18 MR. MARTINEZ: I object to this
19 question, Your Honor. It's clearly not in the area
20 you permitted a question be asked.

21 MR. ROSENBLATT: I don't want to argue
22 with Counsel.

23 THE COURT: All right. Don't argue
24 with him then.

25 I would like to narrow it, as we have
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 discussed, okay, so we won't run into these
2 problems.

3 MR. ROSENBLATT: I really thought that,
4 you know, I was complying with what I heard up
5 there. I am simply asking---

6 THE COURT: Well, you can -- all right.
7 Go ahead. I don't want to have another sidebar.
8 See if you can do it with this question. Go ahead.
9 Ask the question.

10 Q. What I am asking you is -- this is an issue
11 you have studied?

12 A. Yes, sir.

13 Q. The issue of banning smoking in indoor
14 environments?

15 A. Yes, sir. One -- let me explain it a little
16 and it may help to -- the judge to understand.

17 MR. MARTINEZ: Your Honor, I can't
18 object to an explanation, Judge, because I don't
19 know what he's explaining.

20 THE COURT: Come sidebar and I will
21 discuss it with you again.

22 Let me discuss it.

23 (The attorneys and the court reporter
24 approached the bench, and the following proceedings
25 were had outside the hearing of the jury.)

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 THE COURT: The problem is that this
2 witness may not know about the lobbying, and what he
3 may believe to be the position may not be the
4 position that the Court can take. So I tried to
5 narrow it down to within the medical field and
6 within the public field, and then I am not talking
7 about lobbying activities.

8 I don't know what he knows about it. You
9 have to establish some sort of predicate as to what
10 he's going to be talking about.

11 Now, if they have had medical discussions
12 about it and they're opposed, if they have gone
13 through surveys and so forth with doctors and the
14 tobacco industry and all of that sort of thing,
15 trying to find out whether or not their position is
16 for or against, that's one thing. The lobbying
17 activities go into the public arena of legislative
18 acts, okay? I am not talking about having seminars
19 out in the public. I don't think that's lobbying as
20 we know lobbying. You may think it is.

21 MR. MARTINEZ: I don't think so either,
22 Judge.

23 THE COURT: That's what I'm saying. If
24 he could correlate all of that, that's fine. When
25 we start talking about hearings and legislative

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 sessions, then we are talking lobbying. So let's
2 see if we can narrow it within that field.

3 MR. MARTINEZ: I thought he was going
4 to ask him about his experience from the AMA, the
5 tobacco industry approaching the AMA---

6 THE COURT: Or them approaching, either
7 way.

8 MR. MARTINEZ: That's not a problem.

9 THE COURT: That's what I thought we
10 were going into.

11 (The following proceedings were had
12 within the hearing of the jury.)

13 Q. (By Mr. Rosenblatt) Dr. Houston, from the
14 standpoint of the tobacco industry approaching or
15 interacting with the American Medical Association on
16 this issue, in terms of public discussions, public
17 debates, seminars, what has been the consistent
18 position of the tobacco industry with respect to
19 banning secondhand smoke in indoor environments?

20 A. Their position has been that such bans were
21 not necessary.

22 Q. And is that their position to this day?

23 A. Yes, it is.

24 Q. Dr. Houston, have you ever testified in
25 court before today in a case against the tobacco

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 companies?

2 A. I have not.

3 Q. Are you charging for your services?

4 A. Only my airplane expenses.

5 Q. Only your out-of-pocket?

6 A. Correct.

7 Q. Thank you, sir.

8 THE COURT: All right. Cross, please.

9 MR. COFER: Yes, Your Honor. I have

10 some.

11 CROSS EXAMINATION

12 BY MR. COFER:

13 Q. Good afternoon, Dr. Houston. My name is

14 Walt Cofer. I represent Lorillard and

15 Philip Morris.

16 Now, you just told the jury that you
17 believe, or you have opinions, rather, on secondhand
18 smoke and lung cancer and heart disease, correct,
19 Doctor?

20 A. That's correct.

21 Q. And you are board-certified in family
22 practice, right?

23 A. That's correct.

24 Q. You are not an expert in oncology, are you?

25 A. No.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. You are not an expert in epidemiology, are
2 you?
3 A. I'm not.
4 Q. Or statistics or biostatistics?
5 A. No.
6 Q. You don't hold yourself out to your
7 colleagues or your patients as an expert in
8 pulmonology, do you, sir?
9 A. Not any further than any other family
10 physician does?
11 Q. Or cardiology, correct?
12 A. No.
13 Which treat a lot of patients who have both
14 heart and lung diseases, however.
15 Q. You don't have a degree in public health, do
16 you?
17 A. I don't.
18 Q. You have never conducted any original
19 research on the health effects of secondhand smoke,
20 have you, Doctor?
21 A. I have not.
22 Q. Or the chemistry of either tobacco smoke or
23 secondhand smoke, right, sir?
24 A. That's correct.
25 Q. You have never conducted any original
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 research on the causes of lung cancer or heart
2 disease, have you, sir?

3 A. That's correct.

4 Q. Now, you are the point person for the
5 American Medical Association's anti-tobacco efforts,
6 correct, Doctor?

7 A. Yes.

8 Q. You consider yourself to be an anti-tobacco
9 advocate?

10 A. I consider myself to be a pro-health
11 advocate. The other side of that coin, in terms of
12 tobacco control, as called by someone, anti-tobacco
13 advocate.

14 Q. You certainly don't object to that
15 characterization, do you, Doctor?

16 A. No.

17 Q. A goal of the American Medical Association
18 is to reduce tobacco use, right, sir?

19 A. That's correct.

20 Q. If it were reduced to zero, it wouldn't
21 bother you, would it?

22 A. That would be the best for public health.

23 Q. You do have strong feelings about cigarettes
24 and cigarette companies, don't you, sir?

25 A. I do, and so does the American Medical
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Association.

2 Q. You characterized the activities against
3 smoking as a war, haven't you, Doctor?

4 A. I have, and so have a great many other
5 people.

6 Q. You believe it is a war, don't you, sir?

7 A. Yes.

8 Q. You are fighting battles in that war every
9 day, aren't you?

10 A. That's correct.

11 Q. And your father was a cigarette smoker,
12 correct, Doctor?

13 A. Winstons.

14 Q. And he died of coronary heart disease,
15 right?

16 A. Yes.

17 Q. And in May of 1986, you wrote an editorial
18 about cigarette smoking that was essentially a
19 eulogy to your father, correct, sir?

20 A. Yes, it was.

21 Q. You stated in that editorial, quote:
22 "Prevention has taken on a new dimension for me, a
23 new intensity. It's personal now." Correct, sir?

24 A. Yes.

25 Q. As a general rule, Doctor, you believe
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 tobacco companies should be held liable for lawsuits
2 brought by smokers, correct?

3 A. I don't know of how one can generalize on
4 that. I think there is a liability issue that comes
5 into question. I believe there is liability
6 associated with the actions of the tobacco industry,
7 yes.

8 Q. Your deposition was taken in this matter on
9 June 9, 1987. You were under oath then, just as you
10 are today, correct, sir?

11 A. Yes.

12 Q. On page 90, line 23, you were asked this
13 question:

14 Do you believe the tobacco companies should
15 be liable for damages in lawsuits brought by
16 smokers?

17 ANSWER: Generally, yes.

18 That was your testimony, correct, Doctor?

19 A. Yes.

20 Q. You consider the companies that sell tobacco
21 products to be your enemy, correct?

22 A. That's a way to characterize it.

23 Q. You believe that a physician or dentist must
24 take care to create an alliance with the patient
25 against an enemy and that that is a company selling

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 tobacco products, right?

2 A. I don't know about creating an alliance
3 against an enemy with patients. That's generally
4 not something that I have been personally engaged
5 in.

6 Q. Again, on page 92 of your deposition, under
7 oath, taken June 9, 1997, line 13, you were asked
8 this question and gave this answer:

9 Do you agree with the statement a physician
10 or dentist must take care to create an alliance with
11 a patient against an enemy; that is, the company
12 selling tobacco products?

13 ANSWER: I think that's a pretty accurate
14 statement.

15 That was your sworn testimony in June,
16 correct, sir?

17 A. Could I see the deposition, please?

18 Q. Absolutely.

19 MR. COFER: May I approach, Your Honor?

20 THE COURT: Sure.

21 Q. You are Thomas Houston, correct?

22 A. Yes.

23 Q. Right there.

24 A. That's okay.

25 Q. You told us that you had an opinion how

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 smoky it is in aircraft cabins. I think you said
2 smokier than 80 percent of the levels in homes and
3 workplaces, correct?

4 A. Yes, that's based on reading that I have
5 done that looks at -- has tried to quantify that.

6 Q. Now, what I would like you to do for me, I
7 don't want you to describe it, but I want you to
8 tell the jury every article, every study you relied
9 on in giving that opinion.

10 A. I have -- in looking at that opinion, I have
11 read two or three studies on the measurement of
12 smoke exposure in homes and workplaces. The most --
13 the one I used the figure of 80 percent was based on
14 a study done in Oak Ridge or done from Oak Ridge,
15 Tennessee.

16 Q. Let me interrupt.

17 A. To try to quantify that---

18 Q. All I want is a list. So Oak Ridge, the
19 homes and workplaces, that was one study. What
20 else?

21 A. I'm sorry. I don't have an encyclopedic
22 memory about articles, so I can't cite you other
23 articles specifically. I have read several over the
24 last year, set of years, that try to relate this, so
25 I have a general background, a general basis for

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 that.

2 The Oak Ridge study is the one that comes to
3 mind most acutely, because it did try to stratify
4 it.

5 Q. Well, here's what I want to get an
6 appreciation of. You took the stand, you swore to
7 tell the truth, under oath, and you told this jury
8 that you have an opinion that smoking in commercial
9 airlines -- that the levels of smoking were --
10 exceeded 80 percent of those in workplace exposure
11 studies and in the home studies.

12 Now, I just want a list. I don't need an
13 encyclopedia memory, but I want a list of every
14 study that you relied on. Oak Ridge is one. Do you
15 recall any others?

16 A. I don't, sir.

17 Q. Do you have any knowledge of the ventilation
18 rates of airliner cabins?

19 A. Not directly, no.

20 Q. You are not familiar with filtration systems
21 in airplanes, are you?

22 A. I'm not.

23 Q. You have no idea what the relative humidity
24 is in aircraft cabins?

25 A. Except sitting in airplanes myself and
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 experiencing it.

2 Q. Certainly you could not quantify for this
3 jury, could you?

4 A. I could not.

5 Q. Don't know what the temperature range is in
6 airline cabins?

7 A. No.

8 Q. It's true, isn't it, that ventilation,
9 filtration, humidity and temperature affect
10 secondhand smoke levels in the environment, right?

11 A. They can.

12 Q. You are not an expert in aerospace medicine?

13 A. That's correct.

14 Q. You have never conducted any original
15 research concerning the occupational and
16 environmental exposures flight attendants have in
17 airplanes?

18 A. That's correct.

19 Q. Or how much secondhand smoke they were
20 exposed to in airplanes?

21 A. That's correct.

22 Q. You have never treated a flight attendant
23 for any problems related to secondhand smoke?

24 A. That's correct.

25 Q. You haven't been the treating physician for
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 any of the plaintiffs in this case?

2 A. True.

3 Q. You would agree, wouldn't you, Dr. Houston,
4 that your testimony in this case is intended to aid
5 the plaintiffs in their battle against the tobacco
6 industry, correct, sir?

7 A. My testimony in this case is based on a
8 request by plaintiffs' lawyers. If that has a
9 secondary benefit in aiding the plaintiffs in their
10 fight against the industry, I suppose that's what it
11 is.

12 Q. Your deposition, page 93, line 21:

13 But you agree that your providing testimony
14 in this case would aid them in their battle, as you
15 might put it, against the tobacco industry?

16 Yes.

17 That was your answer to that question,
18 correct, sir?

19 A. Yes.

20 Q. And that battle is just one small part of a
21 larger war, correct, Doctor?

22 A. I suppose it is.

23 Q. You are critical of R.J. Reynolds' ad with
24 respect to the MRFIT study, correct, Doctor?

25 A. Yes.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. You are going to have to help me a little
2 bit with this, but as I understand it, MRFIT was a
3 multivariant intervention study; is that right?

4 A. Yes.

5 Q. What that means is they took two groups of
6 people -- they were looking to see whether certain
7 things affected rates of coronary heart disease,
8 right?

9 A. Yes.

10 Q. Specifically what they were looking at was
11 whether blood pressure, cholesterol, and smoking
12 would cause more heart disease than people who
13 didn't have high blood pressure, high cholesterol
14 and didn't smoke, right?

15 A. Right. They looked at a variety of issues
16 in the population that was being studied.

17 Q. These were the three factors they tried to
18 control for, right?

19 A. They tried to control for everything they
20 could, but those were three of them, yes.

21 Q. They were three that they studied, right?
22 You were critical of Reynolds taking out an ad
23 basically saying the study showed no difference
24 between the two groups, right?

25 A. Correct.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. That's what the study showed, right?

2 A. Excuse me?

3 Q. That's exactly what the study found, there
4 was no difference between the two groups, right?

5 A. As I recall, there has been some analysis of
6 cigarette smoking in the MRFIT study that does in
7 fact show that there was a difference, looking back
8 at the figures, and showing that cigarette smoking
9 does play a part in coronary heart disease and that
10 the MRFIT study showed that.

11 I can supply the article to you at a later
12 date.

13 Q. Okay. Let's talk about the article,
14 Multiple Risk Factor Intervention Trial, Risk Factor
15 Changes and Mortality Results, published in the
16 Journal of the American Medical Association on
17 September 24, 1982. That in fact is the MRFIT
18 study, correct, Doctor?

19 A. Yes.

20 Q. Page 1476. The overall results do not show
21 a beneficial effect on CHD, coronary heart disease,
22 or total mortality from this multifactor
23 intervention, right?

24 A. If you say so. I don't have the article in
25 front of me.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. I can show it to you if you would like.

2 Have I read that correctly? Have you had a
3 chance to read that section, Doctor?

4 A. Yes. And further along in the document it
5 also---

6 Q. I will give you a chance to explain, but
7 please answer my question.

8 THE COURT: It's in context with the
9 statement. He's entitled to read it.

10 MR. COFER: That's fine.

11 A. The context of your statement had to do with
12 the overall results --

13 Q. Right.

14 A. -- of a multifactorial intervention. With
15 respect to individual interventions -- and again,
16 it's been years since I read this study, so I would
17 have to go back and look at it again, but in regard
18 to individual interventions it says that -- I am
19 reading from the conclusions here: Measures to
20 reduce cigarette smoking and to lower blood
21 cholesterol levels may have reduced coronary heart
22 disease mortality within subgroups.

23 Q. Right. Now, would you answer my question,
24 and that is: The conclusion of the report was,
25 quote, "The overall results do not show a beneficial

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 effect on coronary heart disease or total mortality
2 from this multifactor intervention." Did I read
3 that correctly, sir?

4 A. Yes, you did. And as I said earlier,
5 further analysis of the cigarette smoking data from
6 MRFIT showed that cigarette smoking did in fact play
7 a part in coronary heart disease mortality and that
8 stopping smoking did have a beneficial effect on the
9 MRFIT subjects.

10 Q. R.J. Reynolds was not the only source that
11 criticized the MRFIT study, was it.? Have you ever
12 heard of the American Journal of Epidemiology?

13 A. Yes.

14 Q. Is that a respected journal?

15 A. Yes, it is.

16 Q. This is a study, June, 1983, Reviews and
17 Commentary, Mortality and the Multiple Risk Factor
18 Intervention---

19 MR. ROSENBLATT: I will object to
20 Counsel simply reading from this.

21 MR. COFER: This is an opportunity,
22 Your Honor, to challenge the witness's opinion. He
23 said -- shall we approach sidebar?

24 THE COURT: I guess we're going to have
25 to go sidebar.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 (The attorneys and the court reporter
2 approached the bench, and the following proceedings
3 were had outside the hearing of the jury.)

4 MR. COFER: The witness suggested that
5 Reynolds did something.

6 MS. ROSENBLATT: He did not testify
7 that he's familiar with the study, he knows anything
8 about the study. To now start reading from some
9 study, we totally object. Unless he states he's
10 familiar with it, he cannot just introduce it.

11 THE COURT: One is if he's familiar
12 with it, the other is whether the Court recognizes
13 it as an acceptable scientific document or paper.

14 MR. COFER: Johns Hopkins.

15 THE COURT: This is the American
16 Journal of Epidemiology.

17 MR. COFER: Johns Hopkins. The witness
18 testified it's a respected journal. I am going to
19 read one passage which deals with criticisms of
20 conclusions of MRFIT. He suggested in his direct
21 examination in questions from Counsel---

22 THE COURT: Let me read it.

23 MR. COFER: Right here. He suggested
24 in his---

25 THE COURT: Now, it does cite some

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 figures and I don't know where they got the figures.
2 MR. COFER: MRFIT study, that's the
3 MRFIT study. What this witness has suggested and
4 left in this jury's mind is that Reynolds was
5 quibbling with the science of MRFIT.

6 The fact is the Journal of Epidemiology is a
7 publication that this witness has recognized as
8 prestigious.

9 THE COURT: Why don't you ask if he
10 knows who this Reuel A. Stallones is, the reviewer.

11 MR. COFER: Even if he doesn't, I
12 should be able to ask him if he agrees---

13 THE COURT: That's the second problem,
14 because I don't know the answer. I'm not even sure
15 that --

16 MR. COFER: I will---

17 THE COURT: -- this might be acceptable
18 to anybody else. Maybe people will look at this and
19 criticize. He makes a statement here it has nothing
20 to do with---

21 MR. COFER: I won't read that part of
22 it. I won't read the last part. My point is it's
23 unfair for plaintiff to suggest Reynolds is the only
24 one criticizing.

25 I have another, Lancet, one of the most
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 respected medical journals in the world. I will ask
2 him that as well.

3 THE COURT: This is his opinion.

4 MR. COFER: They opened the door. They
5 asked the basis. I am entitled to---

6 THE COURT: First ask if he knows who
7 the person is and has read this thing. The second
8 prong is whether it's acceptable or not. I think it
9 is.

10 (The following proceedings were had
11 within the hearing of the jury.)

12 Q. (By Mr. Cofer) I think you told me,
13 Dr. Houston, that the American Journal of
14 Epidemiology is a respected journal; is that
15 correct?

16 A. Yes.

17 Q. It is a peer-reviewed journal, to your
18 knowledge?

19 A. Yes, it is.

20 Q. Formerly the American Journal of Hygiene,
21 right?

22 A. Yes.

23 Q. Ever heard of Reuel Stallones,
24 S-t-a-l-l-o-n-e-s?

25 A. No, I have not.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. You do accept, however, that this is a
2 peer-reviewed prestigious American journal, correct?

3 A. Yes.

4 Q. I would like to ask you---

5 MR. ROSENBLATT: I will object. We are
6 talking now maybe of a prestigious journal, but we
7 are talking about an author that this doctor has
8 never heard of.

9 THE COURT: I understand, Counsel.
10 Subject to the rule, overruled.

11 Q. On June 1983, Volume 117, No. 6, American
12 Journal of Epidemiology -- again, this is the
13 opinion of Reuel Stallones.

14 "My conclusion is that the best explanation
15 for the failure to detect a beneficial effect in
16 MRFIT is that no benefits accrued. No amount of
17 squirming on the" book -- "on the hook alters the
18 fact that for every 1000 test subjects 41.2 died and
19 for every 1000 control subjects 40.4 died."

20 Mr. Stallones and the American Journal of
21 Epidemiology was critical of the conclusions of
22 MRFIT as well, correct, sir?

23 A. It sounds as if he was.

24 Q. Any reason to believe he was affiliated with
25 R.J. Reynolds?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. I have no idea.

2 Q. Have you ever heard of a publication called
3 The Lancet?

4 A. I have.

5 Q. Is that a prestigious peer-reviewed journal?

6 A. It's a British journal, yes.

7 Q. Is it prestigious and peer-reviewed?

8 A. Yes.

9 Q. One of the leading ones in the world,
10 correct?

11 A. Correct.

12 Q. And again, with respect to MRFIT: "One can
13 only offer sympathy to the investigators, who have
14 so painstakingly conducted and analysed this vast
15 effort to so little scientific profit. The results
16 prove nothing, and we must turn elsewhere to answer
17 the question, Does prevention work?"

18 Any reason to think that The Lancet
19 publishes ads from R.J. Reynolds?

20 A. As far as I know, it doesn't, sir. I don't
21 know, though, whether that's a peer-reviewed article
22 review of the MRFIT or an editorial. But it's part
23 of the scientific process, in fact, for big surveys
24 and things like the MRFIT to be analyzed and to be
25 discussed in the medical literature back and forth.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 And as I have indicated, subsequent analysis has
2 looked at the cigarette smoking piece of it
3 independently.

4 Q. I would like to ask you about the scientific
5 process that you just alluded to, and I want to read
6 you the statement and ask if you agree: This is the
7 way science is supposed to work. A scientist
8 observes a certain set of facts. To explain these
9 facts, a scientist comes up with a theory. Then, to
10 check the validity of the theory, the scientist
11 performs an experiment. If the experiment yields
12 positive results, and is duplicated by other
13 scientists, then the theory is supported. If the
14 experiment produces negative results, the theory is
15 re-examined, modified, or discarded.

16 MR. ROSENBLATT: Who is that from?

17 MR. COFER: That's the MRFIT ad, the
18 R.J. Reynolds MRFIT ad.

19 Q. Do you agree with that statement,
20 Dr. Houston?

21 A. Yes. In general, that statement is in fact
22 correct.

23 Q. Thank you, Doctor. Now, let me read you
24 another statement and ask if you agree with this. I
25 will tell you in advance, it's your words.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Within the scientific community, there is
2 always room for disagreement. That's how scientific
3 studies work. That's how science works from the
4 point of view of proving a hypothesis, testing it,
5 dissecting it, and trying to reproduce the effects
6 from one study to the next, and see whether a body
7 of evidence exists.

8 Agree with that?

9 A. Yes, sir.

10 Q. Now, it's true, isn't it, sir, that there
11 are a number of anti-tobacco organizations in this
12 country and abroad, correct?

13 A. Yes.

14 Q. The Group Against Smoking Pollution is one,
15 right?

16 A. Yes.

17 Q. Action on Smoking and Health is another,
18 correct?

19 A. Correct.

20 Q. Tobacco Product Liability Projects, a third,
21 right?

22 A. Yes.

23 Q. Each of these organizations regularly puts
24 out newsletters or holds press conferences and
25 generally communicates with the public their view on

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 various issues pertaining to smoking and health,
2 correct, Doctor?

3 A. Yes.

4 Q. And that's been true for a number of years,
5 hasn't it?

6 A. Yes, it has.

7 Q. You told the jury about the American Medical
8 Association and your Tobacco Control Division,
9 right?

10 A. Yes.

11 Q. The American Heart Association has a
12 comparable one, correct?

13 A. I think so.

14 Q. The American Lung Association does, too,
15 right?

16 A. And the American Cancer Society.

17 Q. And again, they regularly communicate with
18 the public their views on issues relating to smoking
19 and health, right?

20 A. Correct.

21 Q. You told us on direct examination that the
22 American Medical Association sent out letters to its
23 members urging them not to accept funding from
24 tobacco institutions; is that correct?

25 A. Yes, it is.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. And you also told them and told us that it's
2 the position of the American Medical Association
3 that you won't publish a study if it was funded by
4 tobacco money, right?

5 A. No. I said it was the position of the
6 American Medical Association that medical journals
7 should not accept research published by the tobacco
8 industry. Each individual journal has to make up
9 its mind whether it wants to do that or not.

10 Q. How about JAMA?

11 A. JAMA is an independent journal. It's not
12 the mouthpiece of the American Medical Association.

13 Q. Does JAMA do it?

14 A. JAMA is currently, as I understand it -- and
15 I am not on the editorial board -- is reviewing that
16 recent policy statement of the AMA and has not come
17 to any conclusions as to what its policy will be.

18 Q. So even as we sit here today, the Journal of
19 the American Medical Association has not even
20 followed the advice of the American Medical
21 Association; is that correct?

22 A. That's correct.

23 Q. But nonetheless, what the AMA has urged is
24 the journals shouldn't publish research if it's
25 funded by tobacco money, right?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. That's correct.

2 Q. And that's true regardless of the results of
3 the study, right?

4 A. Yes. And based on the ethical constraints
5 or the ethical precepts of the source of the
6 funding -- again, following the lead of the American
7 Thoracic Society journals -- the House of Delegates
8 thought that it was an ethical imperative for
9 medical journals to stay away from tobacco industry
10 funded research.

11 Q. So the American Thoracic Society has the
12 same policy?

13 A. Correct.

14 Q. They have urged their readership, their
15 members, not to publish articles funded by tobacco
16 money?

17 A. Yes.

18 Q. Regardless of the study, right?

19 A. Correct.

20 Q. Regardless of the study's health
21 significance, right?

22 A. That's correct.

23 MR. COFER: That's all I have. Thank
24 you.

25 THE COURT: Anybody else before you --
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 no?

2 All right. Go ahead, sir.

3 REDIRECT EXAMINATION

4 BY MR. ROSENBLATT:

5 Q. Dr. Houston, I want you to tell us all the
6 reasons, as Mr. Cofer stated, why you and the
7 American Medical Association feel that you are in a
8 war against the tobacco industry. From a public
9 health standpoint, why does that war exist?

10 A. The war exists because the tobacco industry
11 has consistently done everything it can to obstruct
12 the public health community of physicians and public
13 policy as regards tobacco and health, has engaged in
14 a variety of actions to create doubt within the
15 public's mind, and has done a great deal of work to
16 subvert the public health process in legislative and
17 policy bodies regarding tobacco and health, and
18 generally has obstructed the efforts of science and
19 health related to tobacco control for decades.

20 Q. Now, the protagonists in this war on the one
21 hand are the tobacco companies. Who, from a public
22 health standing -- who is on the other side in this
23 war? You have got the tobacco companies on one
24 side. From a public health standpoint, who is on
25 the other side?

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 A. The voluntary health agencies, like the
2 American Cancer Society, the American Heart Disease
3 Association, the American Lung Association, the AMA,
4 medical specialty societies of every description,
5 from the pediatricians and the family doctors, to
6 the specialists in lung disease, the cancer
7 specialists, hospital associations, collections of
8 individuals who have been harmed by tobacco smoke,
9 such as the group Americans for Nonsmokers Rights,
10 and people who represent the public interest,
11 generally.

12 Nurses associations. Church associations.
13 That's an organization that has been a very good
14 group, for example, in communicating the problems of
15 smoking and health in an unexpected source, to
16 churches. There is a coalition of black ministers
17 that's involved in educating their congregations in
18 tobacco control, led by the Reverend Jesse Brown.
19 And others that I could name.

20 Q. Okay. Now, World War II lasted four years.
21 How long has the tobacco war lasted?

22 A. Probably since before World War I, but it's
23 been going on for quite a long time.

24 The war, as we understand it today in the
25 metaphor that you used, really didn't start heating

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 up until the 1950s, when the scientific facts about
2 smoking and health really became generally known,
3 both to the physician and the physician public, the
4 medical organizations, and to the public generally.

5 Q. Counsel asked you about whether or not you
6 had done personal research on certain aspects of
7 tobacco and health. You never did personal research
8 on tuberculosis, did you?

9 A. That's correct.

10 Q. You know what caused it, don't you?

11 A. Sure.

12 Q. You know that from reading and studying and
13 analyzing, correct?

14 A. Correct.

15 Q. You feel your father's death was connected
16 to his habits of smoking Winstons, correct?

17 A. I do.

18 Q. But that was his choice?

19 A. That was his choice. It was made in an era
20 when -- in World War II he joined the Navy underage
21 and began smoking there, as many, many servicemen
22 did, in an era when the health effects and the
23 consequences of tobacco smoking were not well-known
24 and were only beginning to be understood when it
25 comes to lung cancer and other diseases.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 So he made a choice that was uninformed from
2 the point of view of health, because there wasn't
3 much data available. Whether he would have made the
4 same choice today, I don't know.

5 Q. Now, Dr. Houston, Mr. Cofer read to you from
6 page 92 of your deposition. I want to read another
7 question and answer on that very same page.

8 MR. COFER: Excuse me. Give me a page
9 and line cite. Let me look at it before you read
10 it.

11 MR. ROSENBLATT: Page 92, line 9.
12 Here. Look at mine. It will save you some time.
13 It's short. What I have got---

14 MR. COFER: This part here? Sure.

15 Q. QUESTION: Do you consider companies that
16 sell tobacco products to be your enemy?

17 ANSWER: They have been the enemies of
18 public health generally, yes.

19 Was that your answer?

20 A. Yes, it was.

21 Q. When the Surgeon General's Report of 1964
22 came out and said that cigarette smoking causes lung
23 cancer, do you know if that Surgeon General had a
24 personal grievance against the tobacco industry?

25 MR. COFER: Excuse me. Objection, Your
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Honor. Leading, beyond the scope---

2 THE COURT: I will sustain it.

3 MR. COFER: Thank you.

4 Q. Since that Surgeon General's Report came out
5 in 1964, and when you look at the history of all the
6 yearly Surgeon General's reports up until today, has
7 there ever been any deviation or fallback from the
8 position expressed in 1964 that cigarette smoking
9 causes disease?

10 A. No. In fact, it has been an amplification
11 of and a better understanding of the wide effects of
12 cigarette smoking on disease relating to a variety
13 of specific subjects that go from chronic lung
14 disease to heart disease, addiction, secondhand
15 smoke and other issues.

16 Q. In this war, when you look at the tactics of
17 the tobacco industry with respect to the scientific
18 information coming out about smoking, how has that
19 related to the tobacco industry's reaction and
20 public posture with respect to scientific
21 information coming out more recently on the issue of
22 secondhand smoke? Is there a relationship?

23 MR. COFER: Objection. Beyond the
24 scope.

25 MR. ROSENBLATT: I'm going to start
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 talking about a war, Judge.

2 THE COURT: Overruled.

3 Q. You can answer.

4 A. The kind of arguments that the tobacco
5 industry made early on related to direct smoking are
6 the same kind of arguments that the tobacco industry
7 has made in recent years about secondhand smoke and
8 its effect on health. The words may not have been
9 precisely the same. Often they were. "We need more
10 research, it's unclear, we don't know enough." But
11 the thrust has been the same.

12 Q. Counsel asked you some -- when he was
13 talking about airplanes and flight attendants, he
14 was asking you some questions about ventilation,
15 humidity, certain kinds of very specific conditions
16 on airplanes.

17 Dr. Houston, is there any doubt in your mind
18 but that nonsmoking flight attendants exposed to
19 secondhand smoke in airline cabins over an extended
20 period of time, that some of them will develop lung
21 cancer and other diseases as a result of that
22 exposure?

23 A. That we would -- our position would be that
24 it would be entirely probable that that is an
25 occurrence. It could happen, yes.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 Q. Now, Counsel talked about some antismoking
2 organizations, which undoubtedly do exist in this
3 country. Dr. Houston, before I called you and
4 contacted you and asked you to be a witness in this
5 case, you had never heard of me, correct?

6 A. That's correct.

7 Q. We had zero contact?

8 A. That's correct.

9 Q. You and I, although we have had some
10 telephone conversations, you and I never met until
11 today, correct?

12 A. That's correct.

13 MR. COFER: Objection, Your Honor.
14 Relevancy.

15 THE COURT: Yes. I'm not sure it has
16 anything to do with what we are talking about.

17 Q. You do not favor, do you, banning -- a law
18 that would ban smoking in this country?

19 A. No, I don't.

20 Q. But you would be a happy man, wouldn't you,
21 if every smoker in America decided at midnight
22 tonight to quit?

23 MR. COFER: Objection, argumentative.

24 A. There---

25 THE COURT: It's repetitious.

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 MR. COFER: That, too. That's what I
2 meant to say.

3 Q. Okay. When Counsel asked you about the
4 antismoking groups and the American Medical
5 Association, the American Cancer Association, the
6 American Heart Association on the one hand, and the
7 tobacco industry on the other hand, in this war, you
8 would agree, would you not, that the budgets are
9 vastly different?

10 A. Yes, I would.

11 MR. COFER: Objection.

12 THE COURT: I will sustain it. Way
13 outside the scope.

14 MR. ROSENBLATT: That's all I have,
15 Your Honor.

16 THE COURT: You may step down, Doctor.
17 (Witness excused.)

18 THE COURT: All right. I assume that's
19 going to wrap it up for the day.

20 MR. ROSENBLATT: Yes, Judge.

21 THE COURT: Tomorrow, nine o'clock.
22 Same admonitions. I will try to be here -- I will
23 be here at nine o'clock. I'm not sure we will get
24 to you all, but you be here downstairs, second
25 floor. Same admonition. Don't read anything about

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 it, hear anything, talk about it, or reach any
2 conclusions.

3 (The jury retired from the courtroom
4 and the following proceedings were had:)

5 THE COURT: Close the door behind you,
6 please. Thank you.

7 All right. Have a seat, folks. We will let
8 them get out of the way before we all go outside.
9 What's the plan for tomorrow?

10 MS. ROSENBLATT: We have
11 Dr. David Burns, who will be probably a fairly long
12 witness, we anticipate. And if he's finished before
13 the conclusion of the day, we have already gone
14 through one of the depositions and will try to get
15 another one finished tonight.

16 MR. ROSENBLATT: Exhibits.

17 MS. ROSENBLATT: Exhibits.

18 MR. ROSENBLATT: He's our only witness,
19 coming in from California. He was scientific -- we
20 anticipate the cross examination will be long. If
21 he finishes earlier, we don't have another witness.
22 If he's not going to be long, let them tell us,
23 but---

24 THE COURT: Right. Do we have anything
25 we have to discuss with Dr. Burns vis-a-vis

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 discovery, anything else?

2 MR. HARDY: We'll have some things to
3 talk about with respect to Dr. Burns, but we can't
4 deal with his exhibits --

5 THE COURT: Until you see them.

6 MR. HARDY: -- until tomorrow morning,
7 Your Honor, because we only got them when we got
8 over here this afternoon.

9 THE COURT: Okay. First thing we will
10 do is take that issue up and see where we are going.

11 MR. HARDY: I would like to clarify one
12 thing for the record -- do you have that letter?
13 Just because I want to make sure there isn't any
14 confusion on the record.

15 The notice from Ms. Rosenblatt on exhibits
16 is dated July 15, and apparently it was just a --

17 MS. ROSENBLATT: Well---

18 MR. HARDY: -- problem with the
19 typewriter, not the---

20 MS. ROSENBLATT: The first page said
21 July 15. I think subsequent pages said the correct
22 date. She mentioned the date was wrong.

23 THE COURT: Of what?

24 MS. ROSENBLATT: The letter,
25 transmittal letter this morning of when we advised

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

1 of what -- Robin noticed the---
2 MR. HARDY: That's fine.
3 MR. ROSENBLATT: Stop picking on Robin.
4 MR. HARDY: Hold on just one minute,
5 Judge. Let me see if there is anything I can tell
6 you about Dr. Burns I am going to want to bring up.
7 No. I think not until tomorrow. But I
8 would like to ask just one question, at least for
9 the Rosenblatts to be thinking about. Since we will
10 all be leaving here after court tomorrow and not
11 reconvening until the following Tuesday, I just want
12 to know sort of what's the process going to be for
13 how we find out what goes on next week?
14 THE COURT: Leave a message with a
15 phone number.
16 MR. ROSENBLATT: I can tell him right
17 now, in an effort to be super cooperative, if we are
18 ever behind, you know, on exhibits, hopefully this
19 will go on our asset side of the ledger.
20 We expect Dr. Tom Petty on Tuesday.
21 THE COURT: Okay. All right, folks.
22 We will be in recess until Tuesday.
23 (The proceedings were adjourned at 4:45
24 p.m.)
25

COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE
COPYRIGHT 1997 -- TAYLOR, JONOVIC & WHITE

